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REPORT ON ILLINOIS-INDIANA INTERSTATE DRAINAGE YELLOWHEAD-SINGLETON DITCH SYSTEM JUNE 1, 1954

Prepared by Authority of
HOUSE JOINT RESOLUTION No. 50
SIXTY-EIGHTH GENERAL ASSEMBLY

DIVISION OF WATERWAYS
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS

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SYLLABUS

In the drainage of the Kankakee Swamps in Lake County, Indiana and Kankakee County, Illinois, an interstate drainage channel known as the Yellowhead-Singleton Ditch has been constructed. Some 235 square miles of Indiana drainage is brought across the State Line and, passing through the main ditch of the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois, has its outlet to Kankakee River in Illinois.

It is alleged that until sometime in the nineteen-twenties this Indiana drainage had an outlet to Kankakee River in Indiana but was then diverted in such fashion as to have its outlet into the main ditch of the Momence and Yellowhead Township Drainage District at the State Line. It is further alleged that this diversion has caused an injury to the State of Illinois in its sovereign capacity.

The historical picture of this interstate drainage is not in all respects clear. The evidence, however, shows that this artificial interstate drainage channel existed as of 1895 and probably some eight or ten years earlier. It antedated the organization of the Momence and Yellowhead Township Drainage District.

Proceedings relative to this ditch system after 1895 show that the main ditch of the Momence and Yellowhead Townships Drainage District has always been understood to be the primary outlet for Singleton Ditch or Indiana drainage. The view that there has been an unnatural diversion of flow so as to injure the State of Illinois in its sovereign capacity does not appear to be substantiated.

REPORT ON

ILLINOIS-INDIANA INTERSTATE DRAINAGE

YELLOWHEAD-SINGLETON DITCH SYSTEM

JUNE 1, 1954

PURPOSE AND NATURE OF REPORT

The Kankakee River rises in northwestern Indiana, and flows generally west across the State Line from Lake County, Indiana to Kankakee County, Illinois at a point about 36 miles south of Lake Michigan. The watershed of Kankakee River in Indiana aggregates about 3125 square miles. Extensive artificial drainage has been installed, under Indiana statutes, to make the land suitable for agriculture. Among the ditches constructed in Indiana is one known as Singleton Ditch. This ditch originates in Lake County, Indiana some 13 miles east of the State Line and, flowing south and west, crosses the State Line about one and one-half miles north of Kankakee River. After crossing the State Line, Singleton Ditch connects with and has its outlet to Kankakee River through the main ditch, commonly called the Yellowhead Ditch, of the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois.

In times of heavy runoff the capacity of this ditch system is exceeded, particularly in the vicinity of the State Line, with resultant substantial damages to crops and property. It has been alleged that the damage in Illinois results because Singleton Ditch drainage has been diverted from a natural outlet to Kankakee River within Indiana and caused to flow into

Illinois in a location where in nature it was not accustomed to go.

The problem has long been of concern to Illinois landowners in the area and in 1953 was referred to the Illinois General Assembly as a State problem. The General Assembly authorized a complete investigation and report.

AUTHORITY FOR INVESTIGATION

By House Joint Resolution No. 50, the Sixty-Eighth General Assembly authorized the Department of Public Works and Buildings to furnish a complete report upon the problem. The resolution reads:

> WHEREAS, Momence and Yellow Head Townships Drainage District No. 1, Kankakee County, Illinois, containing eight thousand (8,000) acres of agricultural lands and traversed by public highways, has been flooded over a period of years by waters flowing from the State of Indiana and unnaturally diverted from their normal flow which have overburdened the lands in such Drainage District to the detriment of the State of Illinois; and
>
> WHEREAS, Comity between the several states encourages voluntary solution of bi-state problems; and
>
> WHEREAS, Solution of the flooding problem requires substantial technical investigation and mutual exchange of information between the public authorities of this State and of the State of Indiana; and
>
> WHEREAS, The General Assembly and responsible members of the administrative branch of the government are as yet without full and complete information as to the sources of and problems created by said flooding; therefore, be it
>
> RESOLVED, By the House of Representatives of the Sixty-eighth General Assembly of the State of Illinois, and Senate concurring herein, that the Director of Public Works and Buildings be requested to confer with appropriate officials of the State of Indiana in the working out of an amicable solution of the injury done to the State of Illinois in its sovereign capacity and to investigate and compile evidence as to the nature and extent of such injury and to the proposed remedies for such injury.

COOPERATION WITH INDIANA AUTHORITIES

On July 28, 1953 a conference between officials of the Illinois Department of Public Works and Buildings, Division of Waterways, and the Indiana Flood Control and Water Resources Commission was held to discuss procedures and cooperation regarding the problem. It was determined that the procedure would follow two principal steps:

1. The compilation of as complete and detailed a history of the development of this interstate drainage as can be prepared from available materials, and with particular reference to official records and documents.

2. The development of field surveys to establish basic hydrologic and topographic data for analyzing the causes of flooding, delineation of the areas affected, and the best solution for relieving the flood problem.

By the cooperative agreements of July 28, 1953 each State agency was generally to do this work within its own State. The following report is compiled from material developed by the two State agencies. Since the problem involves a question as to the legality of past actions every attempt has been made to locate and include all factual data which might aid in the evaluation of this aspect of the matter.

PRESENT DRAINAGE IN VICINITY OF STATE LINE

Exhibit I shows, in pictorial form, the existing drainage in the vicinity of the State Line. In Indiana, from the State Line east the Kankakee River has been dredged and straightened and is now known as Marble Ditch. From the State Line west the channel remains as it was in nature except that the rock ledge just above Momence was cut down

several feet by the State of Indiana, as later described. Singleton Ditch runs to the southwest, collecting drainage from the West Creek, Bailey, Brown, and other ditches not shown. Shortly after it junction with West Creek, Singleton Ditch turns west and, following the New York Central Railroad, crosses the State Line. It connects with Yellowhead Ditch about 6600 feet west of the State Line.

South of the intersection of West Creek and Singleton Ditch is the channel variously called Ackerman Ditch or West Creek and which now drains into Williams Ditch. It is this channel which has been claimed to be the natural outlet for West Creek. The Williams levee protects against overflow from Marble Ditch, and the Williams Ditch collects drainage from an area north of the levee but south of Singleton and Brown Ditches.

The Hayden Ditch gathers some tributary drainage from Indiana and discharges it into lateral ditch No. 6 of the Momence and Yellowhead Township Drainage District.

NATURAL DRAINAGE IN THE AREA

The authority under which this investigation is made raises the question of unnatural or perhaps illegal diversion of water from normal flow. It is therefore desirable to outline, insofar as possible, evidence as to the drainage before changes were made by man.

In a natural condition the lands along the Kankakee River above Momence, a strip varying in width from two to ten miles, or more, and extending to South Bend, Indiana, were swamps and overflowed lands. Differences in elevation were small the area was substantially all inter-

connected swamps, ponds, bayous, marshes and very low islands. Natural drainage in such swamp lands is at best difficult to define and in the present case at least little direct historical evidence could be found.

The Tipton Journal: - The earliest record known of natural conditions in the vicinity of the State Line is found in the journal of John Tipton for 1821. In that year Tipton was appointed a Boundary Commissioner for Indiana and with Samuel McClintoc of Illinois surveyed the Indiana-Illinois boundary from Vincennes to Lake Michigan. The following description abstracted from Tipton's journal shows the situation along the State Line north of the River as he found it in 1821:

> "---Mile 122, made mound in prairie. The prairie quite sandy and very poor.
>
> 123 mile 10 chain timber, 20 chain prairie, 36 chain a stream called by the French, Kankakee River. Prairie intersects the river for about 3 miles on the NE. at this time it is uncommonly high and from appearance when low will afford safe navigation for boats of considerable burden. Encamped for the night.
>
> "Sunday the 24th, Early in the morning made raft and at 11 got safely over. Continued our line. Find the river here running SW. 300 links wide. At 50 chain intersect the river running SE. 300 links wide. At 64 chain intersect the river running SW. 300 links wide. At 67 chain intersect prairie on the NW bank of the river. The prairie rises gradually to the N. from the bank. High, dry, good soil. Intersects the river on the SW side for about 10 chain NE and about 10 chain SW. Continues west for about half mile. One of the most beautiful we have seen. Made mound in prairie.
>
> "Mr. McClintoc and myself attempted to cross the prairie on the direction of the line. It commences from this mound a low wet prairie and continues one mile, then a most dreadful swamp. We tried to gain high land which we could see plain to N, then NE. Directed our packhorse men to head the swamp to E. After wading in this swamp four hours and one half, many times to our waist, and having almost killed our horses and drowned ourselves, we made good our way back to the place where we first entered the swamp.

"We took the trail of our packhorse men who found it impossible to cross to E or N, had turned to the W. after miring and almost drowning most of the packhorses. We met then returning to the mound on the south side of the swamp. We returned to a small grove of timber 1/2 mile east of the line and made a large fire hoping our surveyor, 2 chainmen, and 2 markers that had crossed on the line, would see it and return to camp, knowing that they had neither provisions to eat nor blankets to shelter them from the merciless attack of the musekeeters who almost darken the air with their numbers. Between 10 and 11 o'clock A. L. Davis and Sam Littell waded the swamp and arrived safe in camp, worn down by fatigue, we slept.

"Monday the 25th. Littell and Gemill were dispatched with provisions for our surveyor with directions to run the line 4 miles. Mr. McClintoc, Davis LaPlant, and William and myself set out to effect passage to E. but found it impossible for horses. I then walked through on foot. Found the grass here as in all other parts of the swamp higher than my head and when I gained the timber, the swamp grew much worse. Returned to our former grove of timber and encamped. Mr. LaPlant was dispatched for the surveyors and I walked across the swamps to the high land on the line 3 miles and the swamps almost impassible on foot. Returned to camp much fatigued. We resolved on return of the surveyor and hands to attempt causewaying with grass, and taking our horses on it, and our baggage on our backs. Rain tonight.

"Tuesday 26th. A. L. Davis went down the swamp to find a passage. The surveyor and hands arrive about 9 barefooted and almost naked, having been about 2 days without blankets and but little to eat nor nothing to shelter them from weather and muskeeters. About 10 A. L. Davis returned and reported that at 8 mile the swamp became a deep creek which he had crossed and found high land north of it. This was welcome news. All hands set to mending moccasins in good spirits. We have plenty of baken, flour and coffee, but no sugar. From the surveyors field book, we find he had run the following number of miles to wit:

124 mound in wet prairie
125 ended in our swamp - no mound could be made
126 ended on dry ground and mound a few chains from pond.
These 3 wet prairie and ponds.
127 mile, mound in prairie 2nd rate sandy soil level and dry.

"We left our camp at 11. To our great joy reached the highland at 2 o'clock -----"

Exhibit 2A, a map of the survey of the State Line, reflects Tipton's impression of the drainage of the marsh in 1821.

Township Survey Plats and Field Notes: - In the eighteen thirties the public lands in Kankakee County, Illinois, and Lake County, Indiana, were surveyed by the United States. Delineation of the drainage was incidental to these land surveys but the surveyors' field notes and the plats themselves furnish some information as to the natural condition of the area. Exhibit 2B is a map constructed from the original township plats and field notes, and arranged to show data relative to drainage. The original field notes for the Indiana area have not been examined as were those for Illinois.

Exhibit 2B shows a pond in Illinois with fingers or slough reaching out toward the State Line. This pond, apparently known as Pond Lilly, had an outlet into Kankakee River through a stream then known as Poka-nook-con Creek and later called Bull Creek or Little Bull Creek. In Indiana, the stream now known as West Creek is shown flowing from high ground on the north and losing its identity in the swamp in Section 18. Apparently for some six or seven miles east of the State Line there were no drainage channels through the marsh and into the river of sufficient importance to have been shown on the plat.

Map of Unsold Lands Near The Head Of Lake Michigan

Exhibit 2C is from a map prepared from plats in the Surveyor General's office and dates from about 1840. This map shows a stream branded "Bull Creek" entering the swamps at the route of what is now West Creek.

This stream is shown turning east for about 2 miles through sections 28, 29 and 30 and then south to the river in section 33. This is the only record located showing an outlet for West Creek from the bluffs through the marsh and to the river. If such an outlet existed no trace remains in the existing drainage pattern. This map also indicates drainage lines across the State Line into Illinois in sections 24 and 25.

EARLY DRAINAGE IN ILLINOIS

A large part of the area in Kankakee County now organized as the Momence and Yellowhead Townships Drainage District was originally classified as swamp lands by the Federal Government, and as such was ceded to the State in 1850. The State in turn conveyed it to the County with the understanding that the proceeds of sale were to be used for internal improvement, particularly drainage. Kankakee County in 1854 appointed William Richards as Drainage Commissioner and he served until 1875. In that year he was replaced by Nathan Chester who served until 1895, after which time the post became vacant.

The Momence and Yellowhead County Drainage District

Exhibit 3 is a map of a Momence and Yellowhead County Drainage District. The map is not dated but was made prior to 1897, the source is unknown. The map shows existing county ditches and additional proposed dredge ditches. It also shows an existing dredge ditch crossing the State Line along the line of railroad and connecting with Kankakee River through Bull Creek. A second existing dredge ditch is shown crossing the State Line, and after passing west through sections 17 and 18 connecting

with old channel of Kankakee River. Exhibit 3 also shows in some detail the pond as shown on Exhibit 2B, possibly as altered by later drainage improvements.

It seems probable that any drainage done by the County was of the most minor consequence. Kanaga, in his History of Kankakee County, states that the swamplands in the County were sold for about $95,000. He states that the money was used to grade the court house site, to pay off court house bonds, to build bridges across the river at Kankakee, Aroma Park and Momence, to pay for a survey of the Ft. Wayne and Western Air Line Railroad across the County, and for sundry other purposes to the amount of from $40,000 to $50,000. In view of this it seems clear that very little was devoted to improving the drainage.

EARLY DRAINAGE IN INDIANA

The Kankakee Marsh lands in Indiana were classified as swamp lands and conveyed to the State by the Federal Government in 1850. The State established a mechanism for the sale of the lands and their improvement by drainage works Information available today indicates that very little was accomplished under this program. Later statutes provided for incorporated drainage associations of which a number were planned and several organized. The most widely used method, however, was through unincorporated drainage associations. Authority to create such unincorporated associations resided in the Board of County Commissioners, the circuit and superior courts, and was invoked on petition of any interested person or groups of persons. The Lake County records make

brief mention of a petition filed in June 1868 by J. B. Hoffman and another in the same year by V. A. Halsted and Company but there is no record of assessments or work performed. There is record of two incorporated associations as follows:

The Lake County Draining Company

On July 12, 1865 the Lake County Draining Company filed articles of association with the Lake County Recorder. Appraisers were appointed but there is no record of assessments levied or of drainage work performed.

The Kankakee Valley Draining Company

Articles of incorporation of the Kankakee Valley Draining Company were recorded in Newton County in 1868 and apparently in other counties at the same time. The drainage plans of this company were very extensive and involved St. Joseph, Laporte, Marshall, Starke, Porter, Lake, Jasper and Newton counties. The company was immediately challenged in the courts, and in 1869 in the case of O'Reiley V. Kankakee Valley Draining Company (26 Ind. 169) was held to be without power to levy assessments. A new company of the same name was evidently organized in 1870. Major Gillespie in a report to the Chief of Engineers, U. S. Army in 1876 said:

> "In 1870 and 71 the Kankakee Valley Draining Company was organized, made surveys, adopted a plan of drainage and proceeded to make assessments on lands to be improved by the scheme. While the non-residents who were in the majority in point of area to be reclaimed were in favor of the project, the actual residents who are mostly an illiterate class commenced open war, which was not checked until they obtained an injunction, and finally a decision of the Supreme Court of the State in their favor."

A search of the Indiana Supreme Court cases does not disclose a decision such as referred to by Major Gillespie, between 1870 and 1876. Possibly he referred to the 1869 decision. In any event it seems clear that this company as such did not do any actual ditch construction. A map of the proposed ditches of this company exists however and that part covering Lake County is shown by Exhibit 4A. The date of this map is not known but it probably reflects the plans of the Company as early as 1868. Exhibit 4A shows a proposed lateral ditch No 1 east prong very nearly on the alignment of the present Singleton ditch. It shows a proposed lateral ditch No. 1, west prong which is a connection to the State Line. A north prong is also shown extending to West Creek at the edge of the marsh. The proposed main ditch extended roughly along the route of Kankakee River to South Bend, Indiana. The drainage pattern shown by Exhibit 4A is substantially that ultimately developed, excepting the main ditch.

Exhibit 4B is taken from a map of Lake County as published in 1876. The main ditch shown is obviously the east prong of lateral ditch No. 1 as shown on Exhibit 4A. It is most doubtful that the ditch shown had been constructed by 1876 as the map would indicate unless it reflects early work of the landowners as later described.

DRAINAGE BY INDIVIDUAL LANDOWNERS

The successful drainage of swamp and overflowed lands has generally followed the organization of drainage districts created under workable statutes. Such statutes provide for the inclusion and assessment of all

lands benefited and provide powers of eminent domain so as to construct the necessary ditches across the lands of others. Where large single or closely held ownerships are involved extensive drainage may be installed by the owners without the creation of statutory drainage districts. In the present case certain illuminating data can be developed by a study of the Magoffin-Cass land holdings.

William F. Singleton: - Beers Historical Atlas of Kankakee County, published in 1883, contains the following:

> "William F. Singleton was born in Mercer, Kentucky, May 5, 1840. He was united in marriage January 10 1855 with Gertrude, daughter of ex-Governor Magoffin, of Harrodsburg, Ky. In March 1866 Mr. Singleton came to this county and settled on Section 18, in Momence Township and the following year he took charge of the Magoffin and Cass tracts of Land lying in eastern Illinois and western Indiana. These lands comprising 17,000 acres, have been greatly improved by draining etc. by Mr. Singleton. He has recently (Oct. 4, 1881) organized the Momence Live Stock and Farming Co., and is one of the prominent men of the township, having done much toward its public improvement. He was Vice-President of the old railroad organization known as the Kankakee and Plymouth Co. in 1870."

The Magoffin Tracts: - The Magoffin tracts as mentioned above by Beers were in Illinois and abutted the State Line. Included were all of sections 5, 7, 8, 17, 18, part of Section 6 and the fractional north one half of section 19 in T31N, R15E, all of section 12 and parts of sections 11, 13, 14 in T31N, R14E. In 1875 Magoffin conveyed these lands to a son Ebenezer Magoffin, and a daughter Gertrude M. Singleton, wife of William F. Singleton. These lands were later purchased by Cass.

The Cass Tracts: - The Cass tracts were owned by George Washington Cass, railroad magnate and nephew of General Lewis Cass, Governor of the Michigan Territory. Cass was president of the Pittsburg, Ft. Wayne

and Chicago Railroad, sponsor of the Plymouth, Kankakee and Pacific Railway, the predecessor of the Indiana, Illinois and Iowa Railroad which was built across the area from Momence to North Judson, Indiana in 1882-83. W. F. Singleton in 1891 in Shelby v. C. & E. I. Railroad (143 Ill. 387) testified that when he came to Momence in 1866 George W. Cass owned about 8,000 acres and that he (Singleton) purchased for him from time to time, until his aggregate ownership was 12,000 acres, all in Indiana. Cass himself purchased the Magoffin tract of about 3,000 acres in Illinois and with other purchases increased his holdings to about 17,000 acres. Singleton described the tract as extending along the Kankakee River from 2 1/2 miles west of the State Line to about 10 miles east of the State Line and in width varying from 1 1/2 to 4 1/2 miles; and all lying north of the river.

George W. Cass as of 1883 had acquired full ownership of the island, dams and water power at Momence. His stated purpose in this was to acquire complete control of the water level, permitting it to be drawn down in the wet season and thus help the drainage of his lands above. In 1886 Cass sold a part of the island to the C. & E. I. Ry. for use as an excursion area. The railroad and the Cass estate became involved in a lawsuit, the transcript of which supplies much early information.

George W. Cass died in 1888. His will contains the following specific bequest:

> "To my daughter Mary R. Shelby, wife of William R. Shelby the undivided half of my 'Meadows Cattle Farm' of over 5000 acres of land situate in Lake County Indiana and Kankakee County Illinois, (about equal quantities in each)"

The other undivided half of the "Meadows Cattle Farm" was similarly bequeathed to his sone, Charles W. Cass. The will further provided that all other real property in the area was to be sold and the proceeds divided among the residuary legatees. In 1890 Mary R. Shelby purchased from the estate all remaining rights in the island, dams and water power at Momence.

The Momence Rock Ledge: - In 1881 the Indiana General Assembly authorized a survey of the wet lands of the Kankakee region with a view to improving the drainage, increasing the productivity of the land, and increasing the taxable wealth of the State. This survey was made in 1882 by Professor J. L. Campbell. A feature of the plan of improvement was the lowering of the rock ledge in the Kankakee River just above Momence. Apparently some arrangement was worked out whereby the State of Indiana agreed to finance the work if trust deeds to the bed of the river in Illinois could be secured. Such trust deeds were taken in 1887, an example is shown by Exhibit 5. In March 1889 the General Assembly of Indiana created the Board of Commissioners for the Removal of the Limestone Ledge and appropriated $40,000 for the work.

In May 1890 Charles W. Cass and William R. Shelby, who were the sponsors of this river improvement caused the dams at Momence to be torn out so as to lower the water in accordance with the drainage plans above. The C. & E. I. R.R. repaired the dams and secured an injunction against further damage. The Board of Commissioners for Removal of the Rock Ledge decided not to proceed further until this litigation had been cleared up by the interested landowners. Litigation was handled through

the Appellate and Supreme Courts in the name of Mary R. Shelby. (42 Ill. App. 339) (143 Ill. 387). Testimony given in 1890 and 1891 in this cause gives considerable data on the drainage then in existence.

Mary R. Shelby testified that, prior to the commencement of the suit, she was the owner of 80 percent or 12,000 acres of the lands of the Lake Agricultural Company, the said 12,000 acres being lands that George W. Cass had owned in his lifetime and conveyed to the Lake Agricultural Company, and that in addition she had a one-half interest in 5,000 acres of land in Illinois adjacent to the Village of Momence.

William F. Singleton testified that Cass had started drainage in a small way in 1867, and that when he left the area (about 1886) many miles of ditches from 5' to 7' deep and up to 20' wide had been constructed by steam dredge. Singleton did not know the total expenditure by Cass on drainage but estimated that some $60,000 was expended under his own direction.

Thomas Buntain testified that the Cass lands were drained by dredge ditches into the river and other small ditches. The ditches were about 6 feet deep and 25 feet wide. The dtiching was done by Cass or the Cass Estate during the last 4 or 5 years and ditching by hand was done longer ago than that.

H. K. Wheeler testified that the Cass lands were drained by ditches west and into the river.

Joel P. Williams testified that in 1885 he leased 5200 acres from Cass (Probably the Meadows Cattle Farm), lying east and north of Momence and that the land was drained by ditches emptying into the Kankakee River.

The role of the landowners in this early drainage work is further shown by the Report of the Board of Commissioners for Removal of the Rock Ledge for 1890. Bids taken on the work ranged from $101,691 to $34,000. The work was awarded to Emil Sirois on the low bid. The Board said:

> "It is proper to remark in explanation of disparity in these bids that Mr. Sirois is really the agent of specially interested landowners who propose to protect him from actual loss, while his bid is to remain within the limits the Commission is authorized by law to expend."

The contract with Sirois was not consummated but upon reaward William R. Shelby as individual, and the Lake Agricultural Co., a corporation of which William R. Shelby was president were sureties upon the bond of the successful contractor. The Indiana General Assembly, appropriated an additional $25,000 in 1893 and the work was completed in that year. About 66,000 cubic yards of rock was removed from the channel at the ledge.

The Shelby Survey of 1895

In 1895 J. L. Clark made a survey of land for William R. Shelby. Exhibit 6 shows the tract surveyed, and shows the ditches located by the surveyor. This tract was the "Meadows Cattle Farm" as devised by Cass to his son and daughter in 1888. Exhibit 6 shows, and the surveyors' notes confirm the existence of a system of dredge ditches as of 1895. There were apparently other dredge ditches that are not shown as for example the surveyor remarks that in locating the stone at the corner of section 30, T32N, R9W, he found it buried 3 feet by dirt thrown out of a dredge

ditch.

The engineers' report dated December 8, 1893 to the Board of Commissioners for the Removal of the Limestone Ledge contains a significant item of information:

> "Within the seven miles from the ledge to the State Line there are two deposits of glacial drift, composed, as has recently been discovered, largely of fragments of the Niagara limestone upon which the current of the river will have very little effect. One of these deposits is immediately above the limestone ledge and extends about 500 ft. up the river from Station 0, or the beginning of the work just completed. The other forms a ripple in the river at Indiantown, and Mr. Williams informs me that in constructing the ditches to the north and northwest of Indiantown it becomes necessary to raise the buckets of the dredge in order to work over rock".

The Shelby tract survey shows, and Exhibit 3 confirms the fact that as of 1893 there were only two dredge ditches existing north and northwest of Indiantown. The first is the ditch crossing the State Line and after crossing the south line of Section 11 connecting with Bull Creek in the northeast quarter of Section 14. The second ditch joins Bull Creek in the northeast quarter of Section 14 and runs just south of the railroad to the east line of Section 12. This second ditch is the old channel of Bull Creek.

DRAINAGE BY ORGANIZED DRAINAGE DISTRICTS

The first record of ditch construction in the area under State statutes is that of Singleton Ditch in Indiana. While certain drainage schemes were previously planned the weight of evidence seems to be that there was no actual construction unless by individual landowners and on a small scale.

The following outline of the development of the Yellowhead-Singleton ditch under the statutes is arranged chronologically insofar as possible.

The W. F. Singleton Ditch - In 1879 William F. Singleton filed a petition with the Lake County Commissioners for this ditch. A viewer's report was filed in March 1880 and this report described the ditch as beginning at a point some 2160 feet south of the northeast corner of section 36, T33N, R8W, and running southwesterly 76,200 feet to a terminus at the northwest corner of section 36, T32N, R8W, on the State Line. The ditch was to have a bottom width of 10 feet, top width 20 feet and depth of 5 feet. A second viewer's report states that the lower 31,000 feet was to be completed by January 1, 1882, and the entire ditch was to be completed by December 1, 1883.

In November 1884 a ditch petition was filed by Gertrude M. Singleton and others. The petition was approved in December 1884. This ditch in effect simply increased the size of the Singleton ditch to a bottom width of 20 feet from the eastern terminus southwesterly for 45,000 feet. On October 1, 1888 the Gertrude M. Singleton ditch was reported as complete.

It is not possible to ascertain closely as to when Singleton Ditch was started or completed. L. J. Werick in his interesting book "Pioneer Hunters of the Kankakee" states:

> "In the summer of 1886 was the date of the digging of the Cass and Singleton big ditch in Lake County and was the first dredge ditch".

Exhibit 4D is from a map made by Professor Campbell in 1882 and in connection with his report on improvement of Kankakee River. This map

shows Singleton ditch following the described route but shows it terminating about one mile east of the State Line. It is not known whether this map reflects the ditch as being constructed or simply shows the intended work. Exhibit 4D also shows what is now called West Creek as ending in the marsh, no drainage connection to the river being indicated.

Ackerman Ditch - In September 1885 a Commissioner's report was filed in the Lake County Circuit Court and covering an Ackerman Ditch. The ditch is described as starting at a point 1320 feet south of the northeast corner of section 9, T32N, R9W, and running to the junction of West Creek and Singleton dtich. The work was reported completed in April 1888.

Hayden Ditch - In January 1886 William F. Singleton and others filed a petition in Lake County Circuit Court for a ditch to start at the intersection of West Creek ditch with the half section line of section 19, T32N, R9W, and to run in a southerly direction to the State Line. This petition was stricken from the docket in February 1887. In August 1886 a petition by J. A. Little and others was filed in Lake County Circuit Court for a ditch to begin at a point about 40 rods south of where West Creek crosses the north line of section 30, T32N, R9W, and to run in a westerly course following the channel of Jordan Slough as far as practical to the State Line. This cause was designated as Hayden Ditch. The present Hayden ditch closely follows this route and connects to lateral No. 6 of the Yellowhead Ditch at the State Line. The record does not yield information as to construction of this ditch but the surveyor's notes made in connection with the Shelby survey (Exhibit 6) state that he found the stone at the northwest corner of section 30, T32N, R9W, buried nearly 3 feet deep by the dirt thrown

out from a dredge ditch. In Illinois Hayden ditch passes through fractional section 5 and the east one-half of section 6 in T31N, R15E and these lands, originally a part of the Magoffin holdings were purchased by Singleton from Magoffin in 1872. Hayden ditch crosses the State Line very nearly at Tiptons Boundary mile 125 and Exhibit I clearly shows traces of old swamps and sloughs.

Brown Ditch: - In December 1887 a commissioner's report on the Brown ditch was filed in Lake County Circuit Court. This report shows the ditch as beginning at the southwest corner of section 4, T32N, R7W, thence running in a southwest direction to the main channel of Singleton ditch in section 30, T32N, R9W, and thence following the channel of Singleton ditch to the Indiana-Illinois State Line. In effect this increased the lower end of Singleton ditch to a bottom width of 20 feet. The Brown ditch was reported completed as of December 1895.

West Creek: - Pursuant to petition a ditch in the upper reaches of West Creek was ordered established on December 4, 1884. This ditch ran from the line between sections 5 and 8 of T34N, R9 W, to the line between sections 25 and 36 of T33N, R10W, a distance of about 10 miles. The lower end of this ditch improvement was about 6 miles above Singleton ditch. No record is known as to improvement of West Creek below this point although the report on Ackerman ditch shows it was to run to the junction of West Creek and Singleton ditch.

Status of 1890: - The foregoing description of the various ditches in Indiana reflects the status as of 1890. T. H. Ball in 'Northwestern

Indiana from 1800 to 1900" states:

> In Lake County there are more than 60, perhaps 70, miles of dredge ditches in the Kankakee marsh lands but these were not made by the individual owners of the land as such. They were paid for by a general assessment of the cost on all the lands supposed to be benefited by the drainage. The main ditches are known as the Singleton ditch, named from W. F. Singleton, Agent of the Lake Agricultural Company, the Ackerman ditch, the Criesel ditch and the Brown ditch".

Exhibit 4F is from a map published by Ball in his book mentioned above. This map is dated 1890. The map shows the Singleton, Brown, Criesel ditches as constructed but the Ackerman ditch is not shown. West Creek at this time is not mentioned or shown as an improved channel. Ball's map definitely indicates that the Singleton ditch crossed the State Line, for it is shown as extending about one-half mile into Illinois.

The Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois

The Momence and Yellowhead Townships Drainage District was organized in the County Court of Kankakee County on June 1, 1897, under the statute known as the Levee Act of 1879. The gross area of the District is about 7825 acres and the assessed area 7540 acres. The location, boundaries, and proposed ditch system are shown by Exhibit 7 a map of the proposed district made by J. K. Crosswell in 1897. Other than this, maps, no documents such as engineers or commissioners' reports, were found in the drainage record. Such documents, if available might furnish considerable data as to existing drainage conditions and objectives of the district. In 1914, in connection with a second assess-

ment several reports were filed which bear on this matter as subsequently shown. Construction began in 1897 and the ditch system was substantially completed in 1898.

Singleton Ditch No. 2: - A petition was filed December 12, 1899 for organization of Singleton No. 2. As the number indicates it was basically a cleanout of the existing Singleton ditch. On December 31, 1900 a supplemental petition was filed which reads in part as follows:

> "He (the Petitioner) believes that such drainage can best be had by a ditch commencing at the beginning of the Singleton Ditch at a point near the NE corner of the NW 1/4 of Section 29, T33N, R7W, and extending thence in a southwesterly direction, following the course of said Singleton ditch and in the center thereof, and terminating at the State Line between the States of Indiana and Illinois, where said Singleton Ditch crosses said State Line."

On February 28, 1901 the ditch commissioners petitioned the court for a change in plan, stating as follows:

> "That they believe after a more careful examination of said matters that it would be best to bring the said ditch to a terminus at or near the junction of said ditch with the West Creek ditch. That they believe the construction of said ditch from the said West Creek ditch to the State Line as reported in the last report, can be dispensed with, without doing damage to any person assessed benefits for said ditch and that it will lessen the cost of construction of said ditch in the sum of about $1,600. That the cost of cleaning out and enlarging the Singleton Ditch from the West Creek to the State Line will far exceed the assessments of benefits upon the land situated and lying between the State Line and West Creek and they believe that said expense incurred by cleaning out and constructing the ditch from West Creek to the State Line, can be obviated without being a detriment to any person concerned. That the number of cubic yards of dirt to be removed as per their former report from the ditch from West Creek to the State Line will aggregate about 23,290 cubic yards. That the current of water from West Creek to the State Line is at present quite strong and the cleaning out of the ditch and enlarging it will not increase the current of water but that the water passing

down the Singleton or West Creek will flow rapidly down the old Singleton ditch and keep the same open and in good condition without its being cleaned out as proposed by the report and they ask that the matter be referred back to them to amend their report".

As amended report was filed on March 1, 1901. This amends the termini so as to end the ditch at a point about 400 feet west of the junction of Singleton ditch with West Creek ditch at or near the center of NW 1/4 SE 1/4 Sec. 30, T32N, R9W in the center of the old Singleton ditch.

The work was reported completed in November, 1902 and in February the ditch commissioners were discharged from their obligations.

Status as of 1909: - As of the year 1909 Singleton ditch had been built and the lower end had been enlarged as part of Brown Ditch. The Yellowhead Ditch in Illinois had been built. Records are found in the courts of the two states reflecting this work as being done under the statutes. The Indiana records show Singleton ditch as terminating at the State Line and the Illinois records show the Yellowhead ditch as terminating near the east line of section 12. No records were found up to 1909 covering the connecting link of some 6600 feet in Illinois although such a link certainly had been built. Exhibits 4C and 4D show the drainage pattern in 1897 and 1908. Both these Exhibits reflect the interstate connection of the Yellowhead-Singleton ditch. Exhibit 4C shows a connection of West Creek and Ackerman ditch to Kankakee River in Indiana much as it was shown to exist by the Shelby tract survey of 1895.

Around 1904 and 1905 Engineers of the United States Department of Agriculture made studies of further drainage of the Kankakee Marsh. This study was published in 1909 as Circular No. 80. Exhibit 8 is a map

accompanying the report. This Exhibit does not show a West Creek or Ackerman ditch connection with the river in Indiana. Apparently, while such a channel had been built it was considered an incidental rather than basic feature of the drainage network.

Momence and Yellowhead Townships Drainage District No. I - 1914 Repair: - In 1914, the Momence and Yellowhead Drainage District petitioned the Court for a second assessment, the funds to be used substantially for cleanout purposes. In this petition the original works of the district were described as a main ditch and 10 laterals. The main ditch was described as follows:

> "Said main ditch from its mouth where it empties into the Kankakee River in the SW1/4 Sec. 16, extends easterly through Sec. 15, 16 to the NS 1/2 Sec. line of Sec. 14, thence NE through the NE1/4 Sec. and the SE1/4 Sec. 11, thence easterly through the S1/2 of Sec. 12, to a point near the east side of Sec. 12, all in said town and range."

Exhibit 9 is a map of the Momence and Yellowhead District as of June 1914. It will be seen that the main ditch follows the route described above. If, however, the main ditch as described above theoretically ended near the east side of Section 12 then a continuation of this ditch existed and is shown on the Exhibit as extending along the railroad and into the State of Indiana. It may be seen in comparing the 1897 map of the district (Exhibit 7) with the 1914 map (Exhibit 9) that in actual construction there was some change in location of lateral ditches, particularly lateral No. I.

In connection with the 1914 assessment, a set of profiles of the ditch system was recorded. Exhibit 10 is the east end of the main ditch profile.

Again this exhibit clearly shows the existence of a ditch across the State Line. The official records of the Momence and Yellowhead Drainage District show the main ditch to end at about station 230 of this profile and no authority was found for construction or maintenance of a continuation of this ditch to the east.

The profile as shown by Exhibit 10 shows a proposed bottom width of 34 feet from the State Line to lateral No. I and a bottom width of 50 feet from that point to the river outlet, but does not reflect existing dimensions at the time surveys for the 1914 improvements were made. Through the courtesy of the Kankakee County Surveyor some of Mr. Looker's original field notes were located and made available. The data from these field notes, made in 1912, have been added to the profile. For example, the notes show that in 1912, at station 250, or some 2000 feet east of the theoretical end of the main ditch, the existing channel had a top width of 46 feet, bottom width of 35 feet and a depth of about 5 feet.

The Engineers' Report, filed in connection with the 1914 assessment describes the general drainage situation and its connection with the proposed work in the following language:

> "The U. S. Government report upon the Drainage of Agricultural Lands in the Kankakee River Valley, issued in 1909 says that the Government Engineers in designing new channel for Kankakee River calculated it to carry 1/8" depth over watershed. Said Government report gives area of Main Ditch (called in that report the Brown-Singleton Ditch) as 173,500 acres. If 3/16' depths of water were discharged from this area each 24 hours it would discharge at the rate 81978 c.f.m. and would require a ditch with a bottom width of 54' and depth of 71/2' which would carry the rainfall 50% quicker than the proposed river channel, and is

the size ditch needed for the lower part of the said main ditch. But since the Commissioners think the construction of such a ditch too expensive, upon their order, I have designed the lower part of the said main ditch with a bottom width of 40' which was the width used when the present ditch was constructed.

"In order to excavate and deepen the said main ditch and laterals to the depth indicated on the profiles, it will be necessary to cut or excavate a channel through the boulder moraine and rock at the upper end of the Momence Rock Cut in the Kankakee River, which is about one mile downstream from the mouth of said main ditch and about 2280 below the mouth of Trim Creek and about 1200' west of the U. S. 1/2 Sec. line in Sec. 17.

"It is proposed to excavate a channel 200' wide about 300' long and about 3' deep at the deepest point, the grade line or bottom of said channel to connect with the bottom of the channel of the State Rock Cut and continue with about the same grade as the said State Rock Channel to a point 300' east to the east side of the boulder moraine and rock.

"The said State Rock Channel was completed in 1893 under authority of an Act of the Indiana Legislature in 1889 which appropriated $40,000 and at the next session, $25,000 additional for the enlargement of the channel through the rock rapids in Illinois. The appropriations were authorized upon the plea of facilitating drainage of the marsh lands in Indiana. The appropriations were exhausted when the channel still lacked several hundred feet of reaching the east end of the rock. $300 more was collected from landowners, when this was used up the work was abandoned.

"The channel completed by that work was 8649' long, 300' wide and 2 1/2' deep requiring the removal of 66447 c.y. rock.

"The object of the work at this time is to continue the uncompleted channel to the east end of the rock and connect it with the deeper bed of the river above.

"If the work contemplated in this report is successfully carried out it will greatly improve the drainage system of the said drainage district and make it adequate and sufficient to protect and drain properly the lands within

said district and to insure protection and drainage to said lands except in times of freshet or extreme high water."

In 1917, a third assessment was confirmed in order to complete the work planned under the 1914 assessment and to do some additional work. the additional work as outlined in the petition filed July 21, 1916 was as follows:

> "The main ditch is completed as per plan but should be extended from station 230 to 235 as shown on original profile in order that land beyond said station may drain properly and this extension runs through a ledge of rock."
>
> "The river work is completed according to original plans but the outlet is not adequate and, for proper drainage, work must be continued for 200' more to the east."

Under this and subsequent assessment, the planned improvement and cleanout work was advanced. The status of the work as reflected by the Commissioners' report filed August 8, 1925 was as follows:

> "No work done in the Kankakee River."
>
> "The rock ledge in the main ditch near station 230 has been removed. This work was done by Indiana parties under an agreement between said parties and the Drainage District above named and the landowners therein without expense to said Drainage District."

The proceedings in relation to the 1914 assessment are of especial historical interest in that they clearly reflect the intent of the parties regarding this interstate drain at the time. The engineer's report cited above clearly shows that he was designing a main ditch to handle the flow from the entire drainage area, including the drainage area of Singleton ditch in Indiana. There is no mention whatever as to any part of this flow utilizing West Creek, Ackerman ditch or any other channel,

so as to reach Kankakee River within Indiana. It seems conclusive that the engineer making the calculations and report, the Commissioners for which they were made, the Court in which they were filed, and the landowners who heard the proceedings in open court, all understood that the main ditch of the Momence and Yellowhead Townships Drainage District was the accepted outlet for the Singleton ditch drainage of Indiana.

Singleton Ditch No. 3: - A petition for Singleton No. 3, a ditch cleanout was filed January 24, 1916. Very few original documents were found in the Court files but considerable data was obtained from public notices and numerous remonstrances. The public notice of the proposed improvement gives the route of the main ditch as follows:

> "Main ditch to start in center of Singleton No. 2 where same intersects the range line between ranges 7 and 8 in T33N. Along Singleton Ditch No. two 66,500 feet to a point in the center of Singleton ditch which is near the center of NW 1/4 SE 1/4 Sec. 30, T32N, R9W, thence follow center of ditch known as West Creek ditch to south line of R/W New York Central R. R. R/W which is about 100' west of NW Cor. NE 1/4 Sec. 31, thence southwesterly to Kankakee River and emptying into said river about 500' east of the Illinois State Line in Sec. 1. Said main ditch to have slopes of 1 to 1, bottom width of 35' at beginning and 80' at the end."

This is the only indication found that it was ever contemplated that Singleton ditch would have an outlet to the river in Indiana. On March 30, 1917 a new petition was filed providing for improving the main ditch and 31 laterals. In this petition the main ditch alignment was changed so as to run to the State Line along the existing Singleton ditch. In addition section "B" was added as follows:

"Section "B" commences at Station 754+33 of the Main Ditch and on the line between Indiana and Illinois, from thence run and extend in a westerly direction following the present channel of the Singleton Ditch to Station 66 and thence terminate, said point being the head of the Main Ditch of the Yellowhead drainage district in Kankakee County, Illinois."

A remonstrance filed by the New York Central Railroad on September 12, 1917 indicates that the petition of March 30, 1917 was amended on orders of the court so as to eliminate Section "B" or the extension into Illinois.

In September 1922 Leroy Hayden, Construction Commissioner, reported to the Court that the work was under construction.

In December 1923, certain landowners petitioned the Court for authority to use an unexpended balance of funds to do work on Section "B" or the extension into Illinois. They said that the work on Singleton No. 3 in Indiana was completed, that there was a balance of funds and a better outlet into Illinois was needed. The Court granted this petition by order of December 3, 1923. In February 1924 Leroy Hayden reported to the Court that he had paid the McWilliams Dredging Company $2,022.62 for work on Section "B" and that a final sum of $1,270.66 was to be paid McWilliams for work on this section.

On October 28, 1923, the Commissioners of the Momence and Yellowhead Drainage District in Illinois, and the Illinois landowners involved granted to Leroy Hayden, Drainage Commissioner for Singleton No. 3 a right of way for section "B" the extension into Illinois as shown by Exhibit 11.

Apparently the Indiana interests, in connection with Singleton No. 3 gave

consideration to reducing the flow in the Yellowhead ditch as evidenced by the proposal to turn the flow through the West Creek Ditch into Kankakee River. Although this was abandoned, a plan for decreasing the tributary watershed was included. Singleton No. 3, as shown by the March 30, 1917 petition, called for a Nethery lateral. This lateral, according to a remonstrance filed by the Northern Indiana Land Company, would intercept about 25,000 acres of Singleton ditch headwaters drainage and carry it to Marble ditch near the Lake-Porter County line. It is doubtful that this lateral was constructed.

Singleton Ditch 1948 Repair: - During 1948 the entire length of the Yellowhead Singleton ditch was cleaned out with funds raised through voluntary subscriptions. The total cost of the work is reported as $150,000 of which some $33,000 was expended in Illinois on the reach between the State Line and Kankakee River. The landowners in the Momence and Yellowhead Townships Drainage District contributed $20,000 toward the cost of the work.

THE NEW YORK CENTRAL RAILROAD AND SINGLETON DITCH

A theory has been advanced that Singleton ditch originally drained into a borrow pit used by the railroad in constructing their roadbed adjacent to the State Line. A study of early history is inconclusive on this point, the general picture being as follows:

In 1870 the Plymouth, Kankakee and Pacific Railroad chartered in Indiana, and the Illinois and Kankakee Railroad chartered in Illinois were combined as the Plymouth, Kankakee and Pacific Railroad. George W. Cass,

President of the Pittsburg, Ft. Wayne and Chicago Railroad was a sponsor of the project. The understanding was that if the Plymouth, Kankakee and Pacific would provide the roadbed the Pittsburg, Ft. Wayne and Chicago would iron and operate the line. Subscriptions were taken, Kankakee County, for example, voted $100,000 in bonds. Construction was started but the panic of 1873 and the fact that the Pittsburg, Ft. Wayne and Chicago Railroad had passed into control of Pennsylvania Central and was now unfriendly toward the project, halted the work. Bankruptcy resulted, the properties were sold and it was not until 1881 that a new company, the Indiana, Illinois and Iowa took over and proceeded to complete the work. Poors Manual of Railroads reports the line from Streator, Illinois, to Momence, Illinois, completed and ready for use in 1882 and the line from Momence to Plymouth, Indiana under construction. Poors Manual reports the line from Momence to Shelby, Indiana completed in 1883.

According to the viewers' report on the W. F. Singleton ditch the lower section was to be completed by January 1, 1882 and the entire ditch by December 1883. If such a schedule had been followed, the ditch and railroad would have been under construction at approximately the same time. From the testimony in Shelby v. C.&S.I. Railroad it seems more likely that the ditch construction followed the railroad construction by some three or four years.

The viewers' report on Singleton ditch filed on March 8, 1880 states that it was to run in a southwestern direction and terminate at the northwest corner of section 36, T32N, R10W. This point is on the State Line. As

actually built the ditch crosses the State Line about 348 feet north of this point but the change over the original plan is minor. A careful study of Exhibit 4B shows, however, that the Plymouth, Kankakee and Pacific Railroad was to cross the State Line about one-half mile south of this point. This railroad location was still held in 1882 as shown by Exhibit 4D. As constructed, in or about 1883, the railroad alignment was altered so as to cross the State Line at the northwest corner of section 36, and runs east almost on the section line. Since the location of Singleton ditch was fixed before the railroad alignment was decided upon it is difficult to see any connection between the two.

The New York Central Railroad was asked for any information they might have as to the history of artificial drainage adjacent to their tracks at the State Line. The railroad commented as follows:

> "Herewith print of our plan, dated October 23, 1953 showing the situation. The Singleton Ditch was built from the east to West Creek in 1901. The drainage passed under our Bridge No. 80.94, a 10 span pile trestle emptying into the Williams Ditch and thence to the Kankakee River. The Singleton Ditch was extended from West Creek to the State Line in 1923 where it connected with the Momence and Yellowhead Ditch in Illinois. A dam and levee was built at that time as indicated on the print (Exhibit 16) to divert the water from West Creek into the Singleton Ditch. The Black-Williams ditch was constructed in 1929 passing under the railroad track in a 48" culvert, designated Bridge No. 80.43. Since the 10 span pile trestle referred to above was no longer needed to take care of the drainage, it was removed in 1941 and 36" cast iron pipe installed under the railroad track at that location."

Exhibit 12 shows the plan of drainage as furnished by the New York Central Railroad. It is clear, however, from the data previously presented

in this report that the interstate connection of the Yellowhead and Singleton ditches existed long before 1923 the date mentioned by the railroad

ACKERMAN DITCH OR WEST CREEK SOUTH OF SINGLETON DITCH

No records of ditch construction south of Singleton ditch, which would extend West Creek or Ackerman ditch to Kankakee River, in Indiana, were found under statutory proceedings. The fact that such ditches existed as of 1895 is shown by the Shelby tract survey. In an unpublished report for Flood Control in Illinois River and Tributaries, 1944, the Corps of Engineers, Department of the Army, makes some comments which are understood to be based on local recollections rather than official record.

> "Among the first drainage improvements in the Yellowhead - Singleton watershed was Ackerman Ditch, constructed about 1880 by rather primitive means. --- From available information, it joined Kankakee River near Mile 59.5 and constituted the principal outlet for West Creek as well as for the predecessor to Singleton Ditch, ---.
>
> "About 1882 Singleton Ditch was dredged northeasterly for 12.3 miles from Ackerman Ditch and was also given a supplementary outlet by an extension westerly into Illinois to Bull Creek, which at that time utilized the channel now known as Little Bull Slough to join Kankakee River at Mile 54.0.
>
> "Numerous additions were made to this system in the next 20 years, including a 3 mile extension upstream known as M. J. Brown Ditch, improvements to the lower reaches of Cedar and West Creeks, as well as numerous laterals, the most important being Criesel and Brown (old South) Ditches.
>
> "The upper and middle reaches of Ackerman Ditch were enlarged as parts of Bruce and Bailey Ditches, respectively, and are now known by the latter names.
>
> "Apparently the reach of Ackerman Ditch downstream from the intersection with Singleton Ditch continued to carry a portion of its flood flow. Shortly after the organization of

the Momence and Yellowhead Drainage District in 1912, Yellowhead Ditch, entering Kankakee River at Mile 51.2, became the principal outlet for Singleton Ditch. Part of Bull Creek was straightened, and the former outlet via Little Bull Slough was practically abandoned. At about the same time, Williams Levee was constructed, resulting in the abandonment of Ackerman Ditch south of the levee, and consequent diversion of the remaining reach into Williams Ditch, which enters Kankakee River at Mile 56.45.

"Parts of Singleton Ditch were enlarged or cleaned out ab out 1923, and it is alleged that at this time a dike or spoil bank was placed across Ackerman Ditch just downstream from its junction with Singleton Ditch. In addition, it is reported that some enlargement of Yellowhead Ditch near its upper end was begun at the expense of Singleton Ditch interests, who had some form of easement or right-of-way in that reach, but that the work was discontinued due to the presence of a rock ledge less than a mile west of Illinois (Illinois-Indiana State Line)."

The information quoted above conforms well to the historical picture previously outlined in the present report. It does not explain the construction of Ackerman ditch below Singleton ditch except as a primitive ditch constructed about 1880. The date of organization of the Momence and Yellowhead Townships Drainage District is in error as it was organized in 1897 and the original works constructed in 1898.

MOMENCE AND YELLOWHEAD TOWNSHIPS DRAINAGE DISTRICT ET AL VS. FRANK NELSON

Soon after substantial completion of the work on Singleton ditch No. 3 the Commissioners of the Momence and Yellowhead Townships Drainage District began consideration of a suit at law against Indiana landowners. Abstracts of the minutes of Commissioners' meetings shown by Exhibit 13 reflects the thinking on the matter.

On April 28, 1926 the Commissioners' note that in connection with

Singleton No. 3 an embankment had been so constructed as to prevent any part of the flow in Singleton ditch utilizing the natural channel of West Creek and thus relieving the load on the Yellowhead ditch. On April 17, 1928 consideration is given to enlarging the main ditch and on May 23, 1928 this is discussed as widening the main ditch from 40 to 80 feet. On October 2, 1929 definite consideration was given to filing suit and on November 4, 1929 decision was made to begin the action. In May 1930 an original bill of complaint was filed in the District Court of the United States at Hammond, Indiana. This bill was later amended and supplemented. Some 14 years later, in July 1944, the Court rendered a decision unfavorable to the Illinois District. The memorandum opinion of the Court, and the amended and supplemental bill of complaint are shown by Exhibit 14. This bill of complaint reads in part as follows:

> "That said Singleton ditch has its beginning near the line dividing Lake and Porter Counties, in the State of Indiana, and extended in a generally southwesterly direction to the intersection of said ditch with West Creek about two miles east of the Indiana and Illinois State Line, and thence along said West Creek in a southerly direction to the south line of the right-of-way of the New York Central Railroad to about one hundred feet west of the northwest corner of the northeast quarter of section 31, T32 , R9 , and thence in a southwesterly course and emptying into the Kankakee River about one-half mile east of the Indiana and Illinois State Line in section 1, T31, R10. That thereafter pursuant to a petition filed on the 24th day of January, 1916, in Lake Circuit Court of Indiana, *****such proceedings were had in the matter of said petition as that said Singleton ditch was reconstructed, and that instead of following said West Creek and emptying into said Kankakee River as it did originally, it was constructed in a southwesterly direction to intersect said Main Ditch of said Momence and Yellowhead Townships Drainage District at the Indiana-Illinois State Line."

It will be recalled that the location of Singleton ditch as described in the viewers' report of 1880 and the description of Singleton No. 2 in 1900 both provided that the ditch would terminate at the State Line. The same is true of the Brown ditch. The basis for the view that West Creek, extended was the natural outlet for Singleton ditch drainage is not understandable. The fact seems well documented that Singleton ditch drained into the Yellowhead ditch long before the improvement known as Singleton No. 3 and that there was no alteration of the basic outlet at that time.

The bill of complaint in paragraph V. states that the terminus of the Yellowhead ditch is at the State Line and further states that at this location the ditch has a bottom width of 40 feet and depth of 15 feet. Some improvement of the ditch for a mile or more west of the State Line was done by Indiana as part of Singleton No. 3, and under grant of right-of-way from the Momence and Yellowhead Townships Drainage District. The existence of a ditch of such dimensions and the grant of right-of-way for an even larger ditch would seem to be inexplicable on any other basis than that the Yellowhead ditch was accepted by all concerned as the primary outlet for the Singleton ditch drainage of Indiana.

FLOOD DAMAGES

The Yellowhead-Singleton Ditch frequently overflows its banks with resultant damage. It may be recalled (See page 8) that in 1914 the engineer for the Momence and Yellowhead Drainage District pointed out that in providing for the drainage of this watershed of about 173,500 acres in Indiana and Illinois, a ditch with a bottom width of 54 feet was required

at the lower end. He likewise points out that because the Commissioners would not provide for the cost the ditch was only to be cleaned out to a bottom width of 40' which was the width used in the original construction in 1897. The engineer further pointed out that the drainage works provided would not be adequate in times of freshet or extreme high water. The ditch has since been enlarged, particularly in 1948, but the overflow of June 1952 shows that it is still inadequate by modern standards.

In 1945 the Corps of Engineers, Department of the Army made a survey of the flood problem along the Yellowhead-Singleton Ditch area. That report indicates that an average of some 17,260 acres is overflowed annually of which 5,384 are in Illinois and 11,876 are in Indiana. The average number of acres damaged annually be flooding is about 67% of the above figures. The average annual crop damage in Illinois is about $19,000 and the average annual property damage about $6,000 or a total of $25,000. The property loss consists of damages to general farm equipment, fencing, wells, secondary highways, etc. Disruptive damages or those effecting the general economy of the community are insignificant.

In 1953 the Division of Waterways made a survey of flood damage to public roads in the area subject to flooding in Illinois. The findings of this survey were as follows:

1. There are no State owned highways or other property in the area.
2. Damage to county roads in the area has been nominal; there is no record of damage attributable to any specific flood.
3. Since 1932 Momence Township has expended about $3500.00 in road repairs due to flooding.

DISCUSSION

It has been alleged that in the development of the Yellowhead-Singleton ditch system, the drainage from a large area in Indiana was diverted from a natural outlet through West Creek to Kankakee River in Indiana and caused to flow across the State Line in a location where, in nature, it was not accustomed to go. From the bill of complaint (Exhibit 14) and supplemental information furnished the Division of Waterways it would seem that this diversion is explained as follows:

> The Yellowhead ditch was constructed in about 1898 and had its east terminus at the State Line. It was designed to drain the 8,000 acres of the Momence and Yellowhead Township Drainage District. The Singleton Ditch, built by Indiana Landowners had its outlet to Kankakee River in Indiana through West Creek, and the implication is that, originally, there was no connection between the Singleton and Yellowhead Ditches. In connection with Singleton No. 3 a ditch section joining the Singleton and Yellowhead ditches was built and the entire flow of Singleton ditch and West Creek diverted to the State Line and into the Yellowhead Ditch.

It is clear, from the historical data previously presented that the above is not a true picture of events. An interstate connection of the Yellowhead and Singleton ditches certainly existed as of 1895 and probably some eight to ten years earlier. The historical record shows that beginning with the original Singleton Ditch in 1880 the plan was to carry this drainage across the State Line where it now goes. Until some time in the nineteen twenties a supplementary outlet through West Creek

existed but it is nowhere mentioned as being an important factor in the drainage network. The engineers' report in connection with the 1914 assessment in the Momence and Yellowhead Township Drainage District clearly shows the understanding of all concerned at that time that the Yellowhead ditch was considered to be the outlet for Singleton ditch. There is no mention of partial relief by flow through West Creek ditch to the Kankakee in Indiana. By inference the same understanding existed in 1897 since the existence of a ditch east of the mouth of Lateral No. 1, with dimensions as shown by Exhibit 10 is difficult to explain on any basis other than that it was to carry Singleton Ditch drainage. This inference is supported by a consideration of relative ditch sizes. The engineer in 1914 found that a 54 foot ditch was required to carry the drainage from the watershed of 173,500 acres or 270 square miles. In 1898 the Yellowhead Ditch was constructed with a width of 40 feet and if Indiana drainage is excluded the watershed would be about 35 square miles. This would mean that for a watershed of 270 square miles a 54 foot ditch was considered necessary, and for a watershed of 35 square miles or about one-eighth as great a ditch of 40 foot width was considered necessary. This is absurd hydraulically, and can only indicate that it was expected in 1897 that the Yellowhead ditch would carry Singleton ditch drainage.

The grant of right-of-way (Exhibit 11) given in 1923 to Indiana reads in part as follows:

> "To clean, deepen and widen what is known as the Singleton Ditch and a part of the main ditch of said drainage district, which main ditch is a continuation of said Singleton ditch".

The language above quoted shows clearly that as of 1923 Yellowhead ditch was regarded as a continuation of Singleton ditch and disproves any theory that this interstate connection originated in the nineteen-twenties. The grant of right-of-way leaves little doubt as the authority under which the work of cleaning, deepening and widening was done for this reach of 6,600 feet within Illinois. Again it seems clear that the Yellowhead ditch was regarded as the outlet for Singleton ditch drainage.

It is believed that the historical data presented in this report amply supports the following conclusions as to the development of the Yellowhead-Singleton ditch system:

From 1866 to 1895 the lands on both sides of the State Line, aggregating some 17,000 acres and through which the ditch or ditches in question pass were owned or controlled by the Singleton-Cass-Shelby interests. These landowners substantially improved their lands by drainage at individual expense and without recourse to statutory proceedings. In 1880 Singleton ditch, with its western terminus at the State Line was authorized under Indiana statutes. In the construction of this ditch it was carried westward into Illinois and to an outlet to Kankakee River through Bull Creek. In 1898 the main ditch of the Momence and Yellowhead Township Drainage District was built. This ditch utilized Singleton ditch from the State Line to Bull Creek but at this point the ditch was carried westward to an outlet to Kankakee River in section 16, T31N, R14E. In subsequent years the Yellowhead-Singleton ditch was improved by deepening, widening and cleaning under various statutory proceedings or by voluntary cooperation of the landowners.

It appears that from the beginning Singleton ditch had its primary outlet in Illinois and that this outlet antedated the organization of the Momence and Yellowhead Township Drainage District.

The existence of certain dredge ditches as, for example, West Creek from the river north to Section 18, are easily understandable as the work of the landowners on their own initiative and without reference to statutory proceedings.

COMMENTS OF THE ATTORNEY GENERAL

The foregoing historical report on the Yellowhead-Singleton Ditch System was referred to the Attorney General of Illinois for comment on legal phases of the matter. The Attorney General made the following comment:

LATHAM CASTLE
Attorney General
State of Illinois

Springfield

February 25, 1954

DRAINAGE:
Momence and Yellowhead Drainage
District No. 1, Kankakee County

Honorable E. A. Rosenstone
Director
Department of Public Works and Buildings
Springfield, Illinois

Dear Sir:

I have your letter of February 1, 1954, wherein you refer to House Joint Resolution No. 50 of the 68th General Assembly, and further state as follows:

> "In partial fulfillment of the requirements of House Joint Resolution No. 50, this Department has made an extensive examination into the history of this drainage development and we are pleased to transmit herewith a preliminary copy of our findings in this regard.
>
> "We shall appreciate your review and comment on this report, together with your suggestions as to further action under House Joint Resolution No. 50 in view of the facts presented in this report."

House Joint Resolution No. 50 of the 68th General Assembly (1953 House Journal, Vol. 1, Pages 732-733), provides as follows:

> "WHEREAS, Momence and Yellow Head Townships Drainage District No. 1, Kankakee County, Illinois, containing eight thousand (8,000) acres of agricultural lands and traversed by public highways, has been flooded over a period of years by waters flowing from the State of Indiana and unnaturally diverted from their

normal flow which have overburdened the lands in such Drainage District to the detriment of the State of Illinois; and

"WHEREAS, Comity between the several states encourages voluntary solution of bi-state problems; and

WHEREAS, Solution of the flooding problem requires substantial technical investigation and mutual exchange of information betweeen the public authorities of this State and of the State of Indiana; and

"WHEREAS, the General Assembly and responsible members of the administrative branch of government are as yet without full and complete information as to the sources of and problems created by said flooding; therefore, be it

"Resolved, by the House of Representatives of the Sixty-eighth General Assembly of the State of Illinois, the Senate concurring herein, that the Director of Public Works and Buildings be requested to confer with appropriate officials of the State of Indiana in the working out of an amicable solution of the injury done to the State of Illinois in its sovereign capacity and to investigate and compile evidence as to the nature and extent of such injury and to the proposed remedies for such injury."

The report submitted with your letter denotes exhaustive investigation and is in excellent form. From this report it would seem that prior to the year 1897 the present interstate drainage channel known as the Singleton Ditch, existed as a dredge ditch. (See Exhibit 3). The Clark Survey of 1895 also shows this interstate dredge ditch. (Exhibit 6). Although the official records of the Momence and Yellow Head Townships Drainage District No. 1, Kankakee County, Illinois, in 1914, do not disclose the extension of the ditch system of said drainage district into Indiana (see Exhibit 7), yet a map of said district, as of June, 1914, shows a continuation of the drainage ditch system of said district into Indiana. (See Exhibits 9 and 10).

It further appears that, in 1923, the commissioners of the Momence and Yellow Head Drainage District and certain landowners granted a right of way to an Indiana drainage commissioner to maintain a drainage channel of fifty feet bottom width from the Indiana State line west to the

east terminus of the Yellow Head ditch. (See Exhibit 11). It is further noted that Indiana landowners have expended considerable sums for improvement of portions of the drainage ditch located in Illinois.

It is further noted that the engineers for the Momence and Yellow Head Drainage District pointed out, in 1914, that a ditch with a bottom width of fifty-four feet was required for the lower part of the ditch. However, since the commissioners thought the construction of such a ditch too expensive, the ditch was designed to have a bottom width of forty feet only.

It would seem highly probable that the flooding of the lands due to overflow of the ditch may be caused by the inadequacy of the ditch to carry the rainfall. In other words, if the ditch were constructed to the width specified by the engineers, it may be that flood damage would be avoided.

It further appears that an express grant of right of way was made in 1923 by the Momence and Yellow Head Drainage District to an Indiana drainage commissioner for a portion of the Singleton ditch located in Illinois. Although your report does not show any express grant of right of way prior to 1923, in view of the long lapse of time during which this interstate drainage ditch has existed, it would seem probable that the doctrine of presumption of an ancient grant would be applicable. After some fifty or sixty years, because of the application of this doctrine, it is believed that one may safely assume an easement for drainage purposes exists in behalf of the owners of the upper lands in Indiana. (Trustees of Schools v. Lilly, 373 Ill. 431; 2 Corpus Juris Secundum, Pages 874 and 876).

In view of the facts submitted in your report, it is difficult to see wherein the State of Indiana or any of its governmental subdivisions or individual landowners may be held to a legal responsibility or liability for the overflow of the Singleton ditch.

Very truly yours,

/s/ Latham Castle

Attorney General

LSF:dp

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County Commissioners Records, Lake County, Indiana, Crown Point

Lake County Circuit Court Records, Lake County, Indiana, Crown Point

County Recorders Records, Kankakee County, Illinois, Kankakee

County Clerks Records, Kankakee County, Illinois, Kankakee

County Surveyors Records, Kankakee County, Illinois, Kankakee

Supreme Court of Indiana: C'Reiley and others v. the Kankakee Valley Draining Company (32 Ind. 169)

Supreme Court of Illinois: Shelby et. al. v. Chicago and Eastern Illinois Railroad (143 Ill. 387)

Illinois Appellate Court, Chicago and Eastern Illinois Railroad v. Shelby (42 Ill. App. 339)

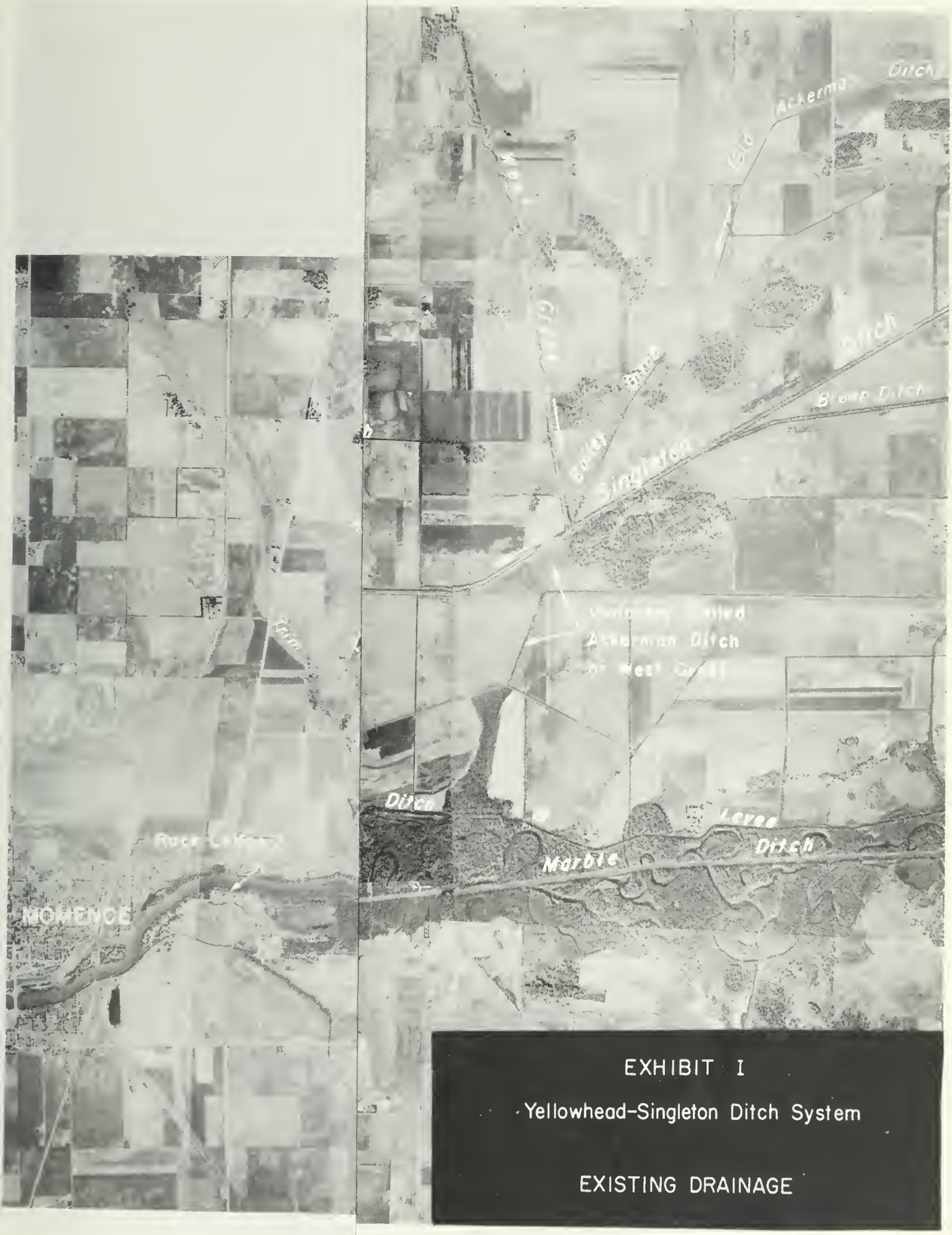
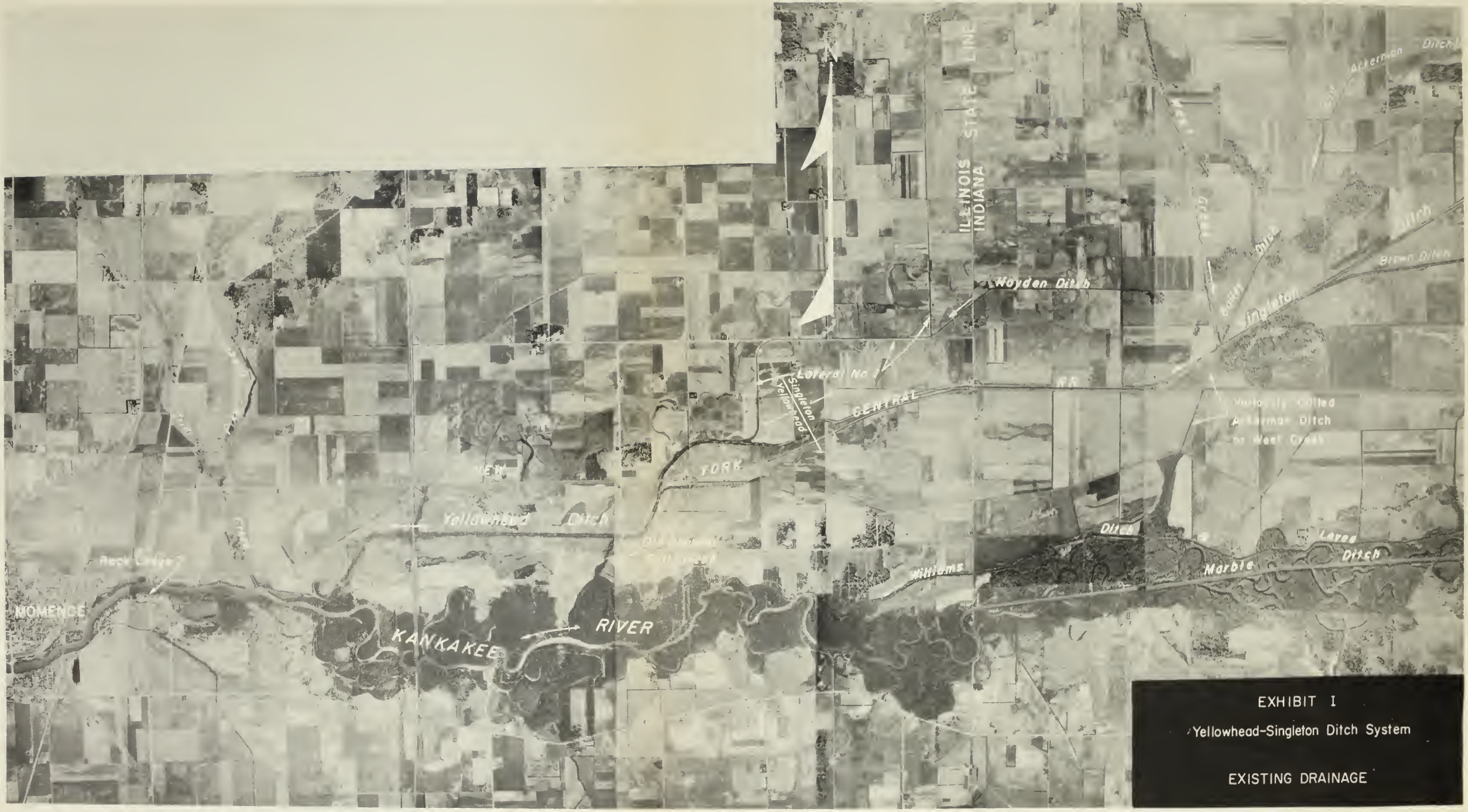


EXHIBIT I

Yellowhead-Singleton Ditch System

EXISTING DRAINAGE



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Yellowhead-Singleton Ditch System

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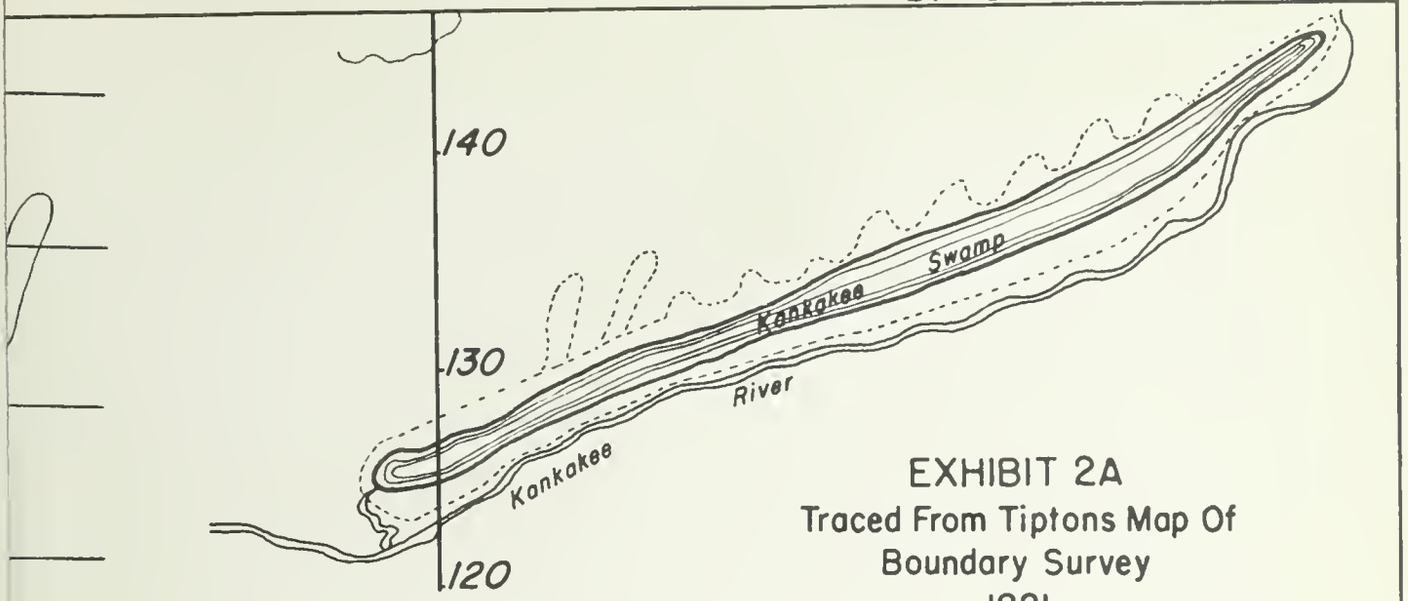
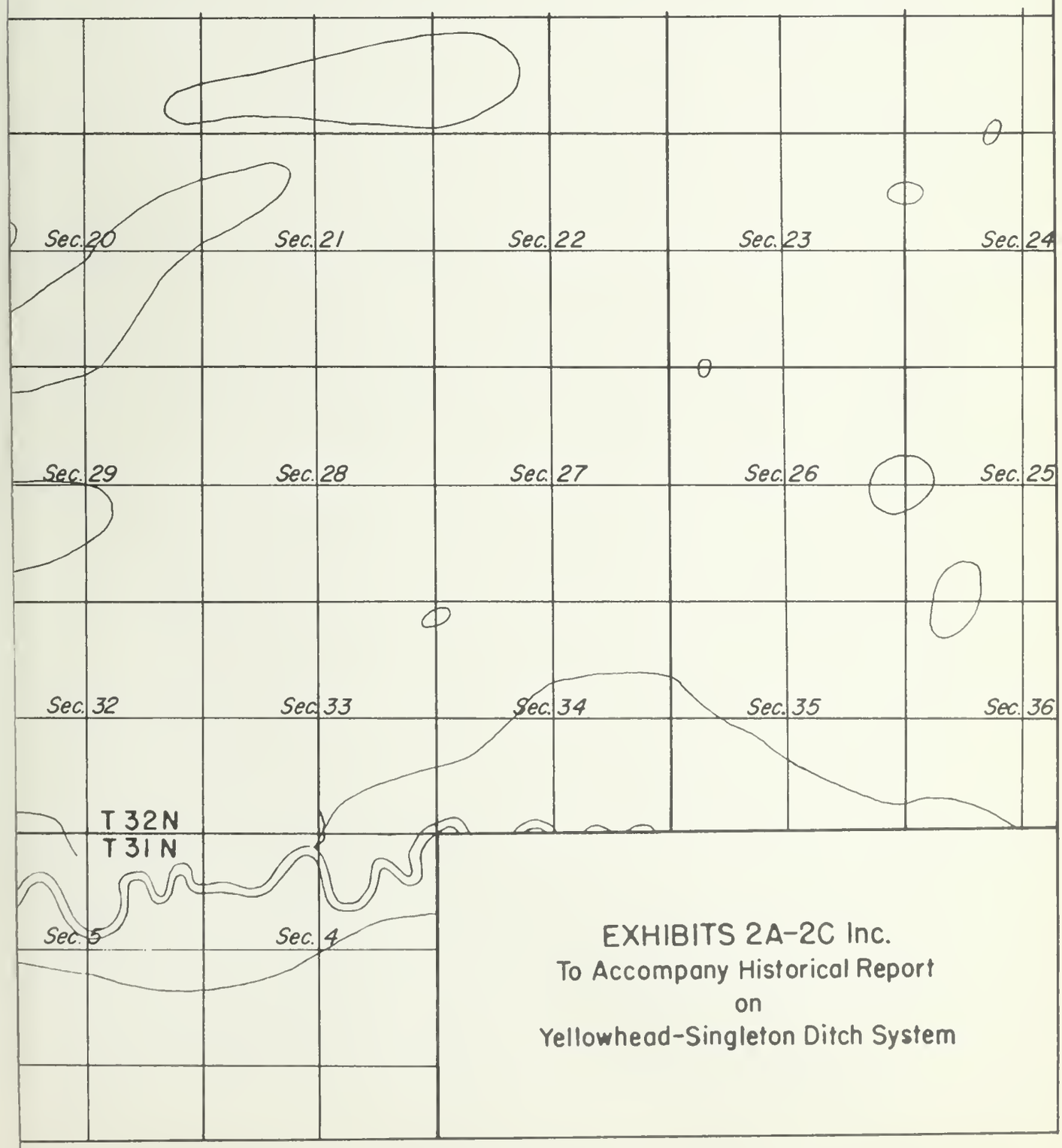


EXHIBIT 2A
Traced From Tiptons Map Of
Boundary Survey
1821



EXHIBITS 2A-2C Inc.
To Accompany Historical Report
on
Yellowhead-Singleton Ditch System

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS

DIVISION OF WATERWAYS

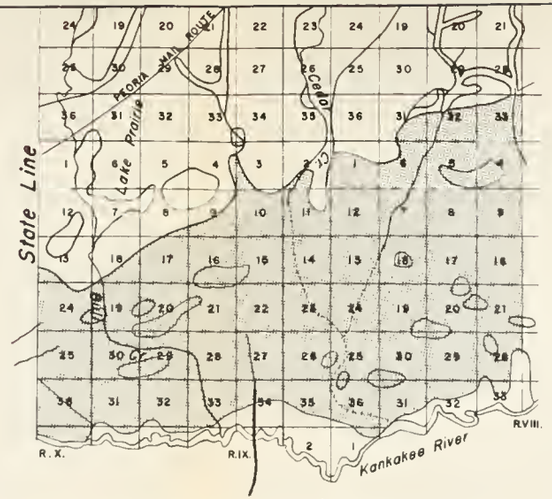


EXHIBIT 2C
Traced From Descriptive Map Of
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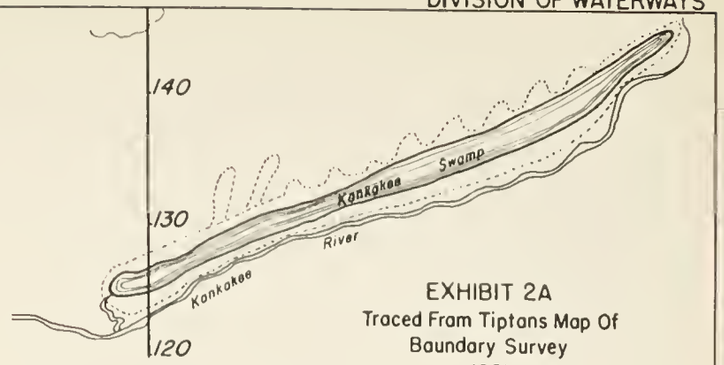
Michigan By Salan Robinson About 1840.



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1821

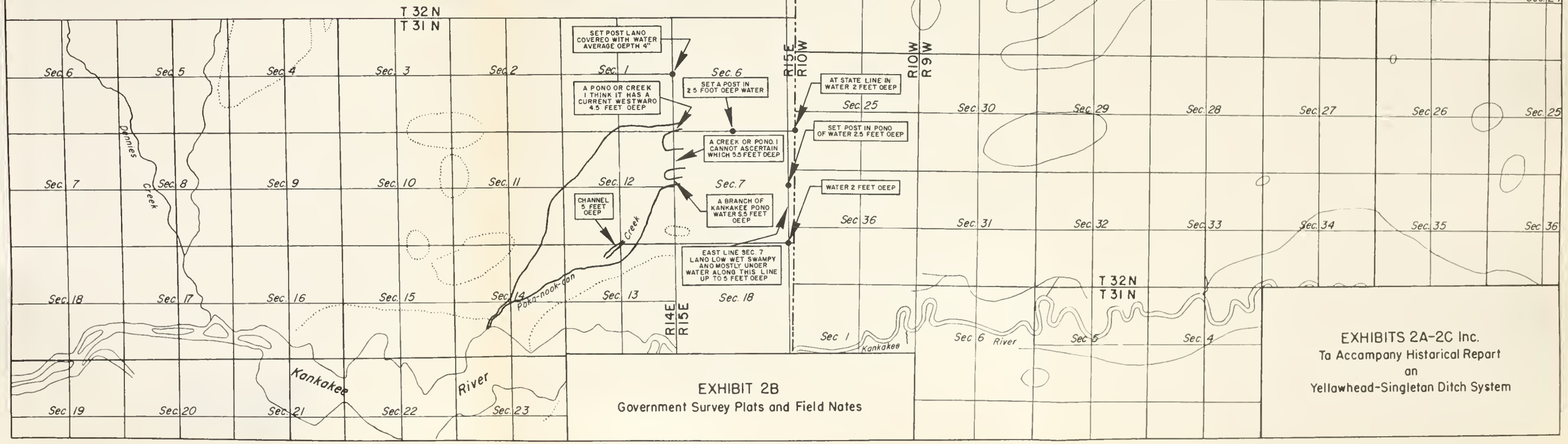

EXHIBIT 2B
Government Survey Plats and Field Notes

EXHIBITS 2A-2C Inc.
To Accompany Historical Report
on
Yellowhead-Singleton Ditch System

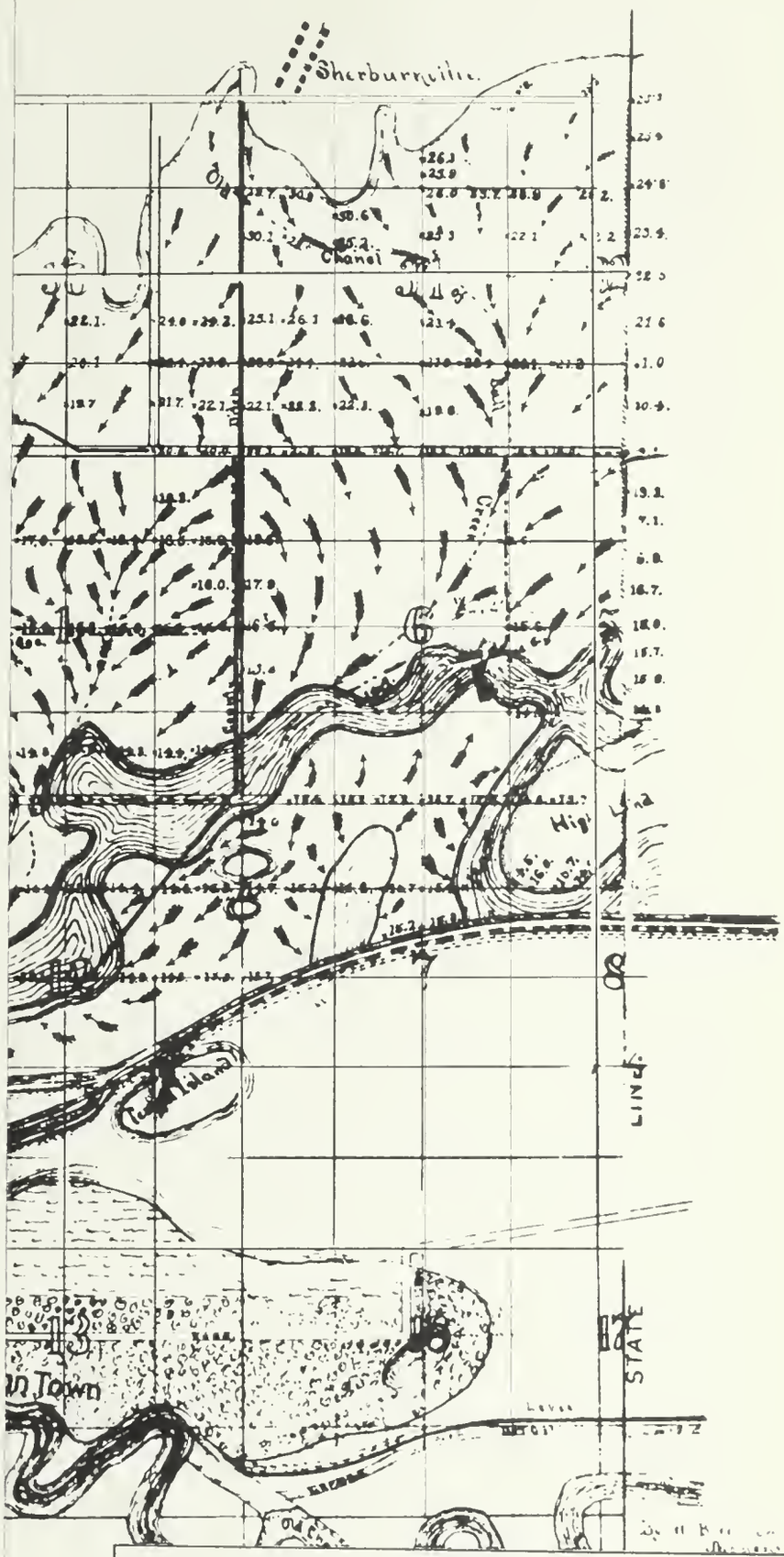

EXHIBIT 3

Momence And Yellowhead County D. D.
To Accompany Historical Report
On
Yellowhead Singleton Ditch System

Momence, and Yellowhead,

COUNTY DRAINAGE DISTRICT

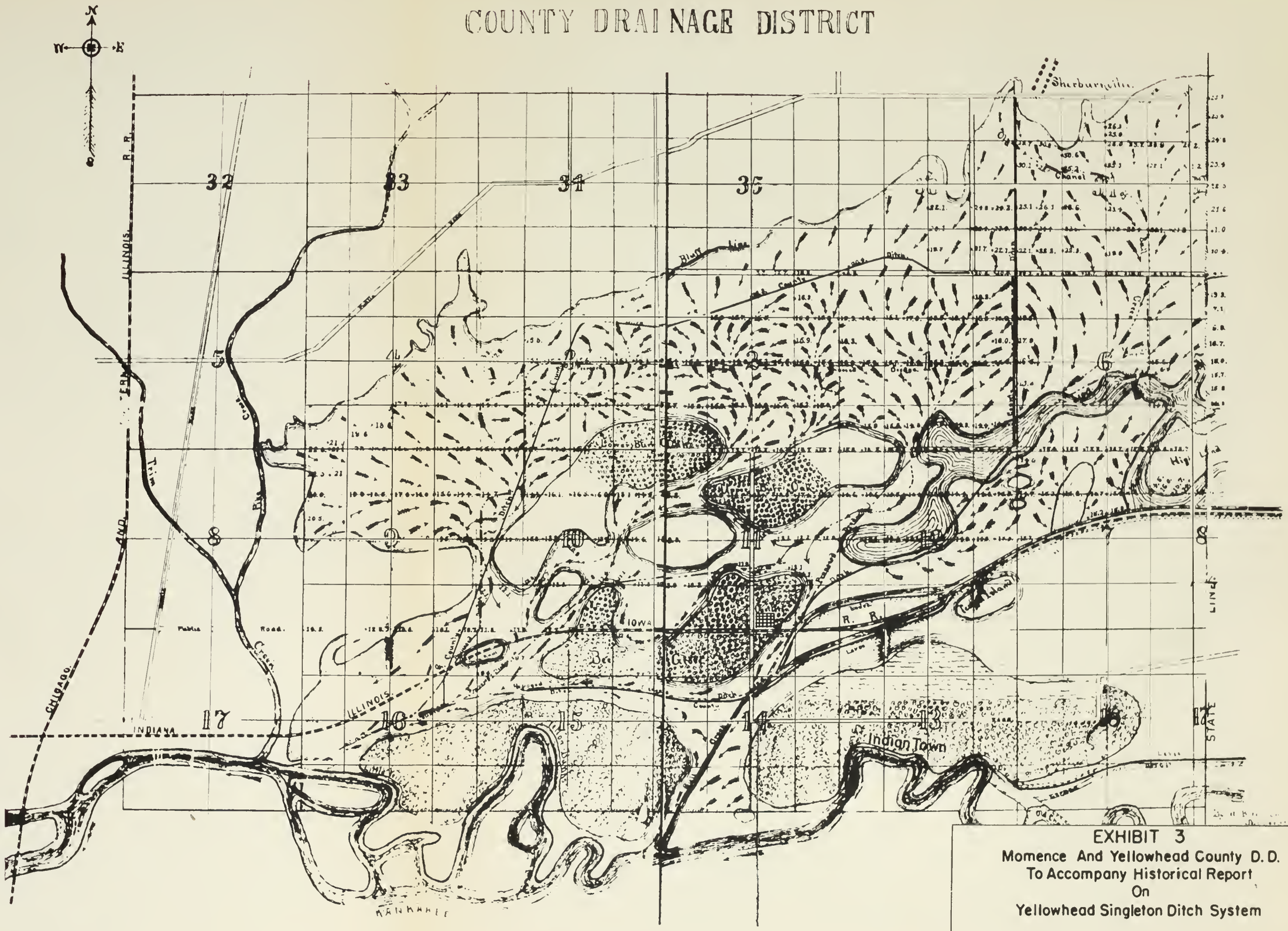

EXHIBIT 3
Momence And Yellowhead County D. D.
To Accompany Historical Report
On
Yellowhead Singleton Ditch System

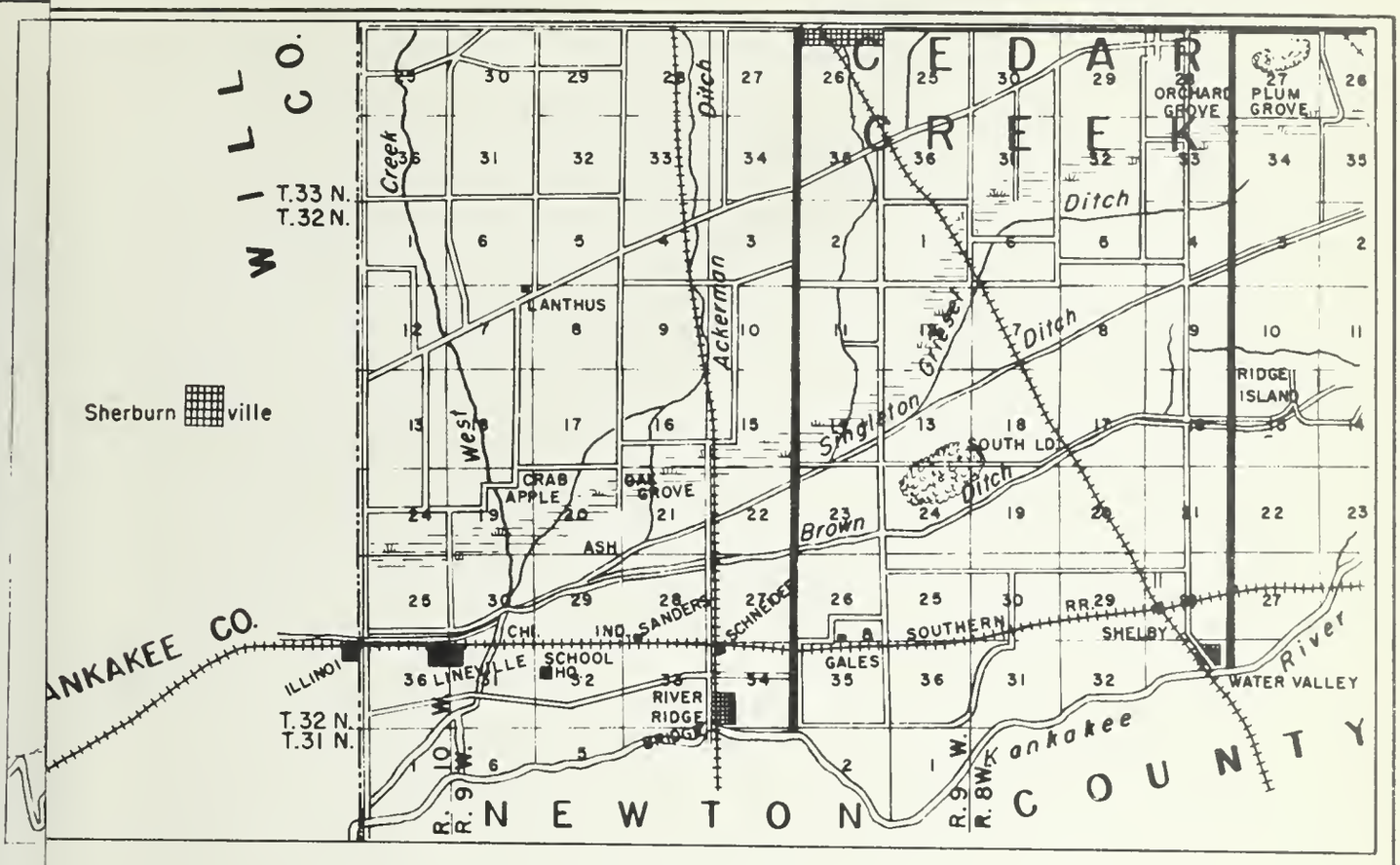

EXHIBIT-4C

Traced from Atlas Map of
Lake County Indiana 1908

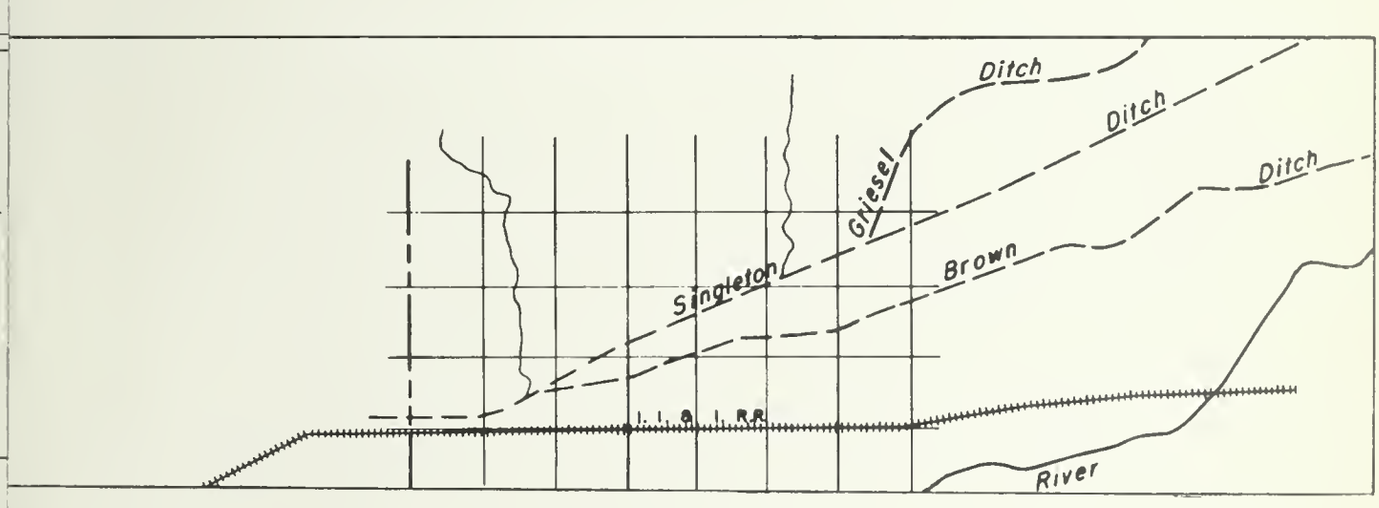

EXHIBIT-F

Traced from a map of Lake County Ind.
T. H. Ball 1890

EXHIBITS-4A-4F inc.

To Accompany Historical Report
on
Yellowhead Singleton Ditch System

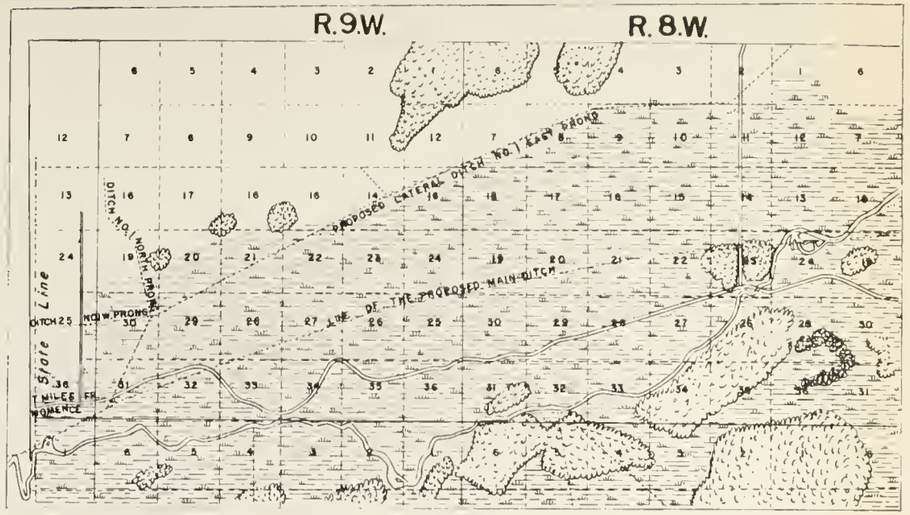

EXHIBIT-4A
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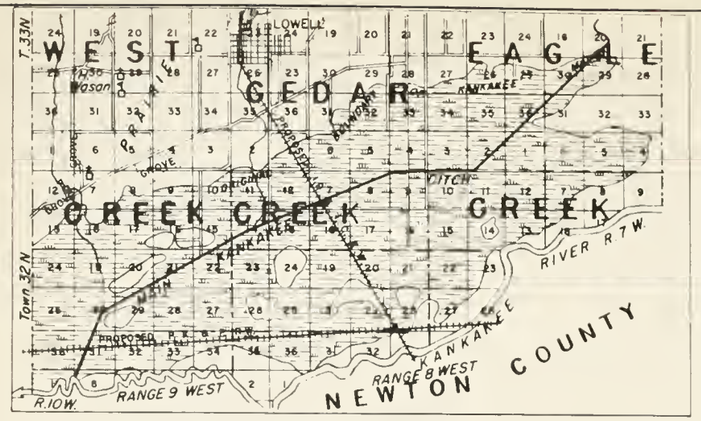
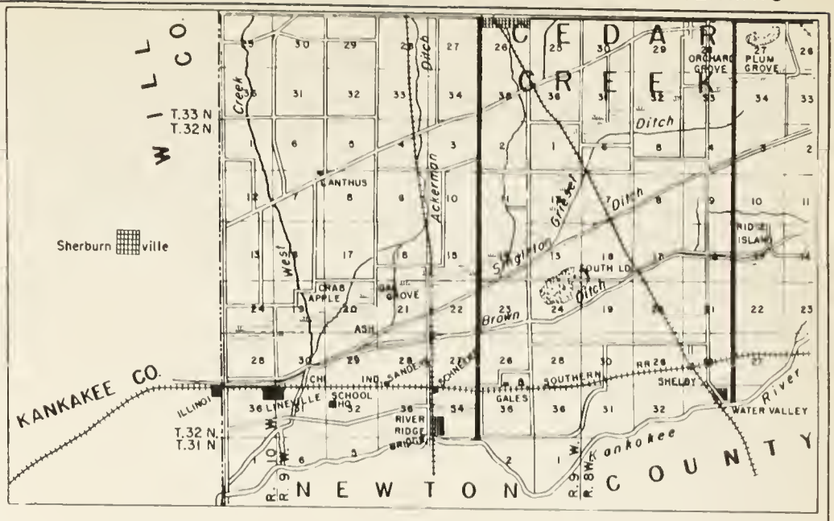


EXHIBIT-4B
Traced from an Illustrated Historical Atlas of the State of Indiana
Baskin, Forster & Co. 1876



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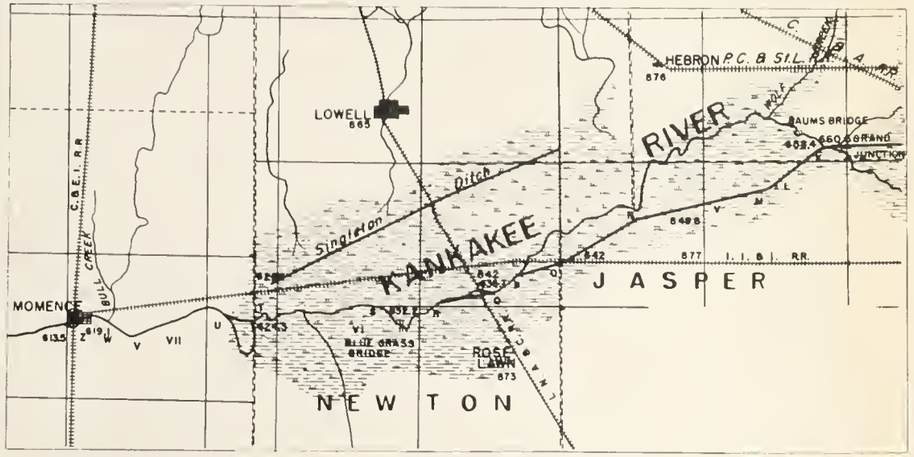


EXHIBIT-4D
Traced from a map accompanying Report by J.L. Campbell on the Improvement of Kankakee River 1882

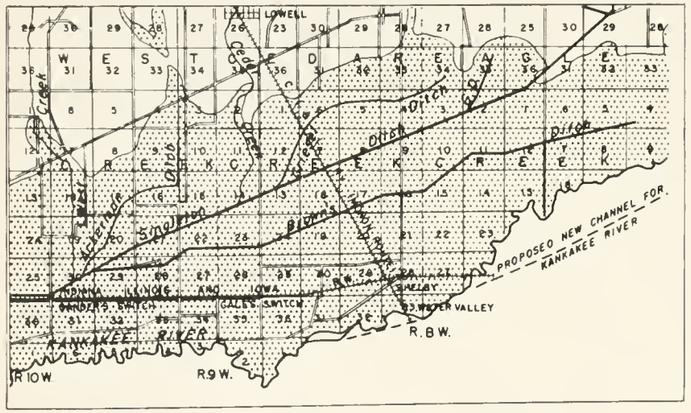


EXHIBIT-E
Traced from a Geologic Map of Lake County Department of Geology and Natural Resources of Indiana 1897

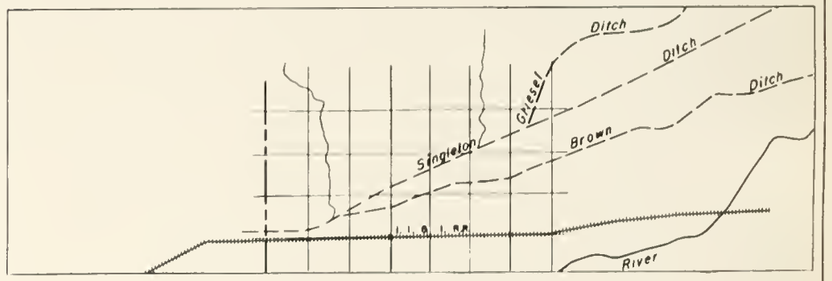


EXHIBIT-F
Traced from a map of Lake County Ind.
T. H. Ball 1890

EXHIBITS-4A-4F inc.

To Accompany Historical Report on Yellowhead Singleton Ditch System

TRUST DEED

THIS INDENTURE WITNESSETH, That the Grantor, James W. Perry and Lomira Perry, his wife, for and in consideration of the sum of one Dollar, to them in hand paid, and other valuable considerations, convey and quit claim to BRUCE CARR, the AUDITOR of STATE of the STATE of INDIANA, and his successors in office, in trust for the State of Indiana, that portion of the lands which under the Kankakee river and comprise the bed thereof, described as follows, to wit:

> "One hundred feet north of the thread or center of Kankakee river bordering on the east Forty-one (41 acres in the North fractional North-west quarter of Section Twenty four (24) Township Thirty one (31) North, Range Thirteen (13) East of the Third Principal Meridian situate in Kankakee County, State of Illinois."

IN TRUST, NEVERTHELESS, for the following purposes: that the State of Indiana may cause to be excavated and removed from said riverbed earth, stone and such other material as may be necessary to improve said riverbed so as to facilitate the flow of the water through the same, and to sell the stone removed for the benefit of the State of Indiana;

PROVIDED, however, and this conveyance is expressly conditioned that the State of Indiana shall, within five (5) years from the first day of November, A. D. 1887, cause the stone ledge at and above and below Momence to be removed for a space of not less than one hundred feet nor more than two hundred feet in width, and so as to lower the bed of the river seven feet at the highest point of said ledge; and should the State of Indiana fail to comply with this consition the Auditor of State of said State, or his successors in office, shall reconvey to the Grantor herein, his heirs or assigns;

PROVIDED, however, that should the said State be stayed by litigation in commencing or prosecuting said improvement, the time of said prohibition shall be no part of the time limited for the completion of said improvement;

PROVIDED FURTHER, that the conveyance is for drainage purposes only, and intended to facilitate and improve the drainage of the wet lands in Illinois and Indiana lying above the said ledge of stone at Momence, and subject to the rights and powers herein conveyed to The State of Indiana for drainage purposes, the said land comprising the bed of the Kankakee River as aforesaid, shall be and remain the property of the Grantor, his heirs and assigns, for all other purposes and uses whatsoever.

WITNESS the hands and seals of the grantors, this 24th day of February A. D. 1887.

James W. Perry (Seal)

Lomira Perry (Seal)

EXHIBIT 5

NOTE: Hatched area shows tract of land surveyed for William R. Shelby in 1895. This is the tract devised by George W. Cass in 1888 to his daughter Mary R. Shelby, wife of William R. Shelby, and his son Charles W. Cass as the Meadows Cattle Farm.

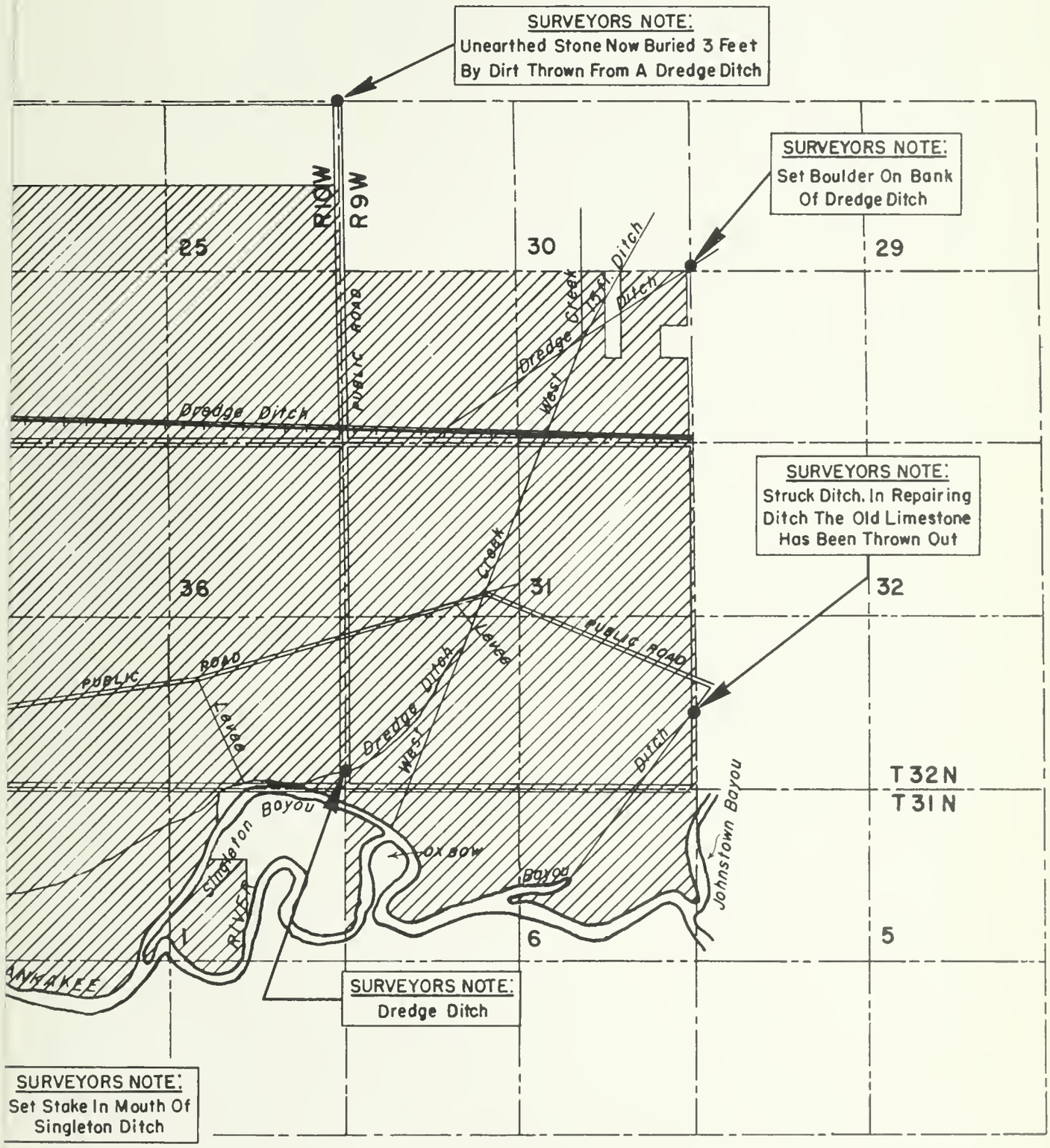


EXHIBIT 6
THE SHELBY TRACT SURVEY
To Accompany Historical Report
On
Yellowhead–Singleton Ditch System

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS

DIVISION OF WATERWAYS

NOTE: That part of the hatched area lying in Illinois was a part of the Magaffin tracts. These lands were conveyed by Magaffin to his son Ebenezer Magaffin, and daughter Gertrude M. Singleton in 1875. In 1871 and 1872 William F. Singleton bought all of fractional section 5 and the east one-half of section 6, T31N, R15E.

In 1874 Singleton was given power of attorney, (to use in any manner,) over the fract. SW1/4 and fract. SE1/4 Sec. 14 and the E 1/2 of E1/2 of SE1/4 Sec. 15. T31N, R14E. The exact purpose is unknown but the lands cover the outlet of Bull Creek and the purpose may be related to drainage.

NOTE: Hatched area shows tract of land surveyed for William R. Shelby in 1895. This is the tract devised by George W. Cass in 1888 to his daughter Mary R. Shelby, wife of William R. Shelby, and his son Charles W. Cass as the Meadows Cattle Farm.

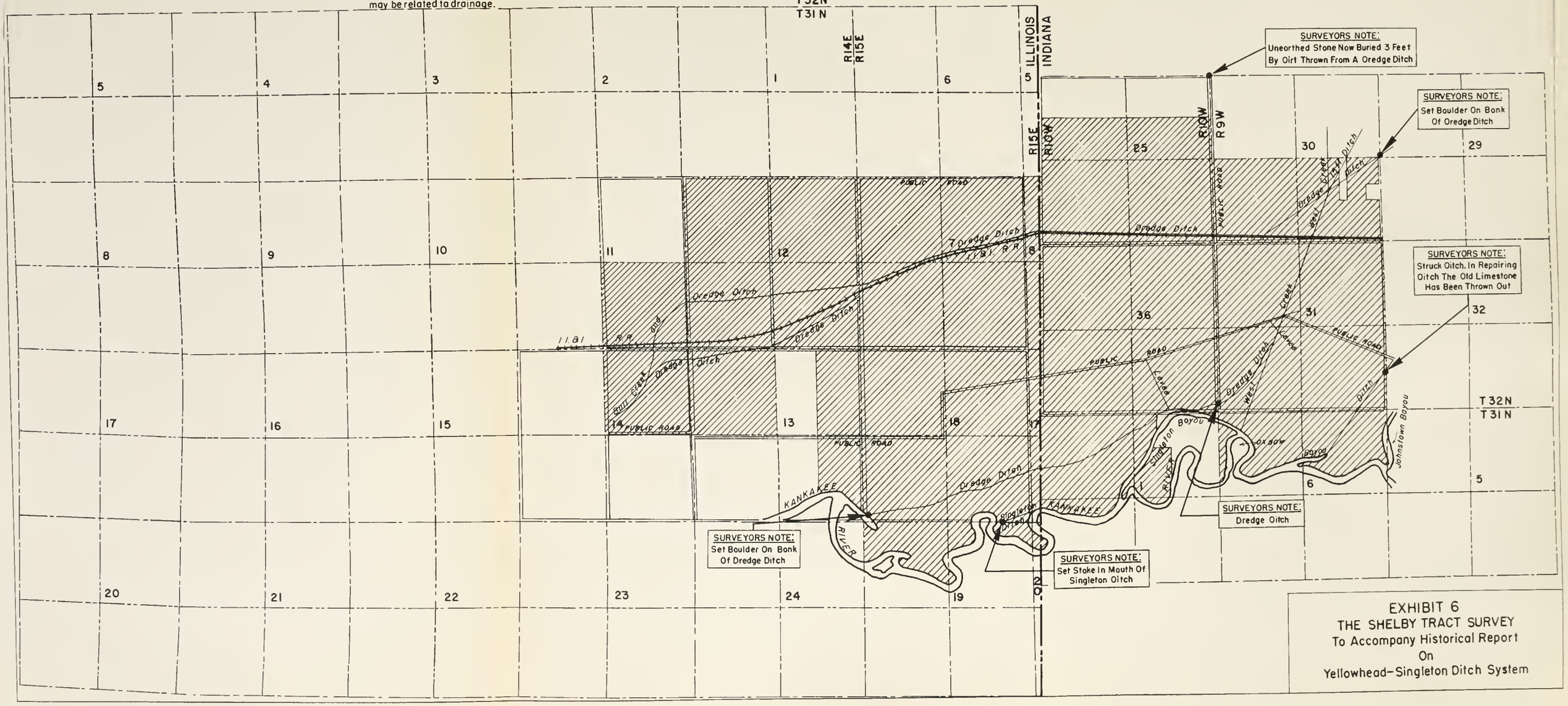
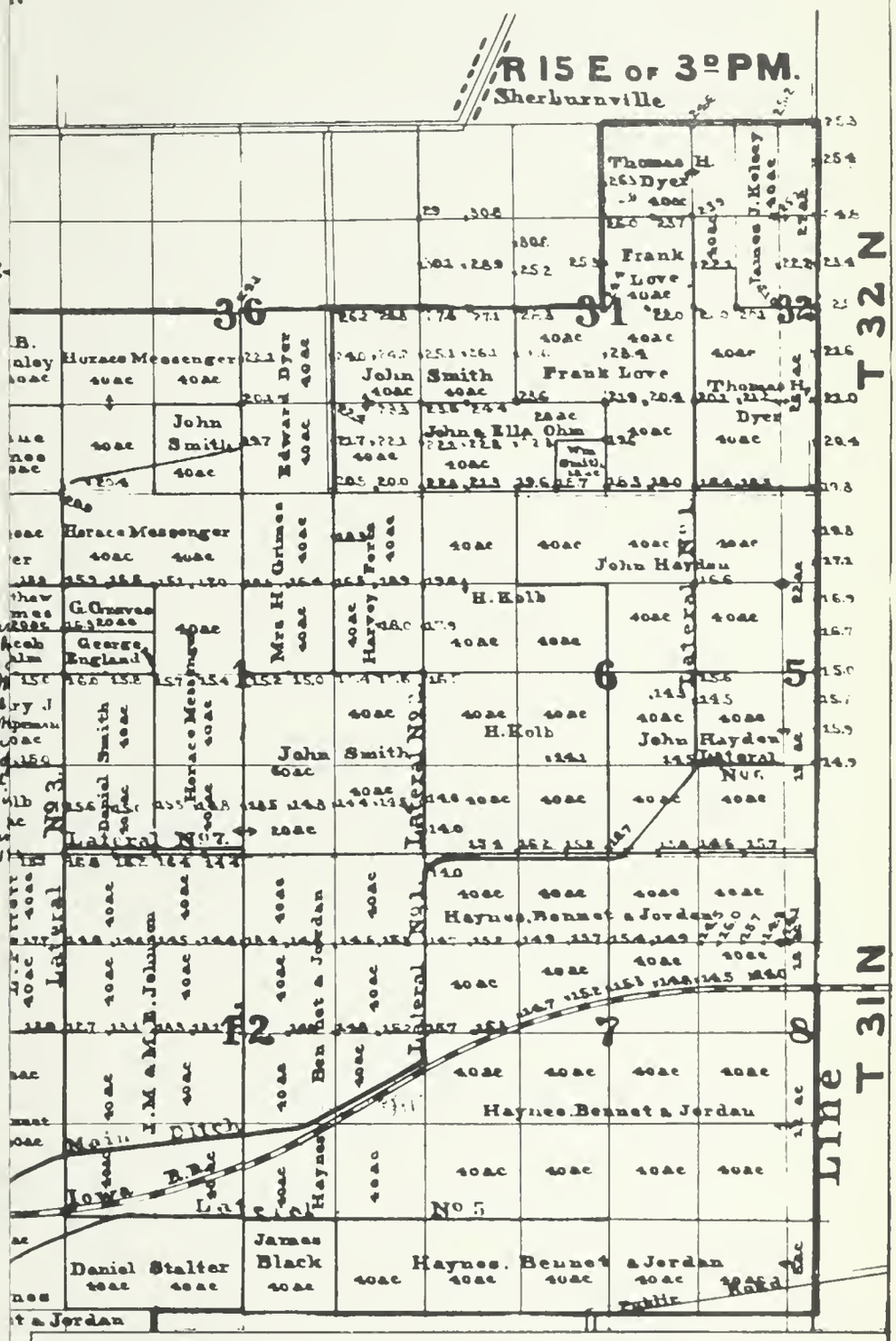


EXHIBIT 6
THE SHELBY TRACT SURVEY
To Accompany Historical Report
On
Yellowhead-Singleton Ditch System

DEPART

DIVISION OF WATERWAYS



The outside boun
by the lines shaded
There are eleven
named, as on Plat.
inclusive, and an
description of the
is embodied in my
The Right of Way
as a rule be deducted
The figures in red
in feet and tenths of
Ditch which is assum
Kankakee. May 1st

EXHIBIT 7

Momence And Yellowhead Townships Dr. Dist. No. 1

1897

To Accompany Historical Report

On

Yellowhead – Singleton Ditch System

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS

DIVISION OF WATERWAYS

PLAT

of the

Momence & Yellowhead

Townships

DRAINAGE DISTRICT Nº 1.

Kankakee Co. Ills.

Remarks.

The outside boundary of the Drainage District is indicated by the lines shaded heavily with red ink.

There are eleven ditches proposed to be constructed and are named, as on Plat, "Main Ditch" and Laterals No one to Ten inclusive, and as shown on Plat in blue ink. A particular description of the outlet route, and source of each of these ditches is embodied in my report of the Drainage Commissioners.

The Right of Way of the Indiana, Illinois & Iowa R.R. should be deducted from the acreage of soil as noted on Plat.

The figures in red ink show the elevation of surface of the ground in feet and tenths of feet above bottom of Bayou at outlet of Main Ditch which is assumed at 0.00.—

Kankakee, May 1st 1897

J.K. Crosswell
Engineer.

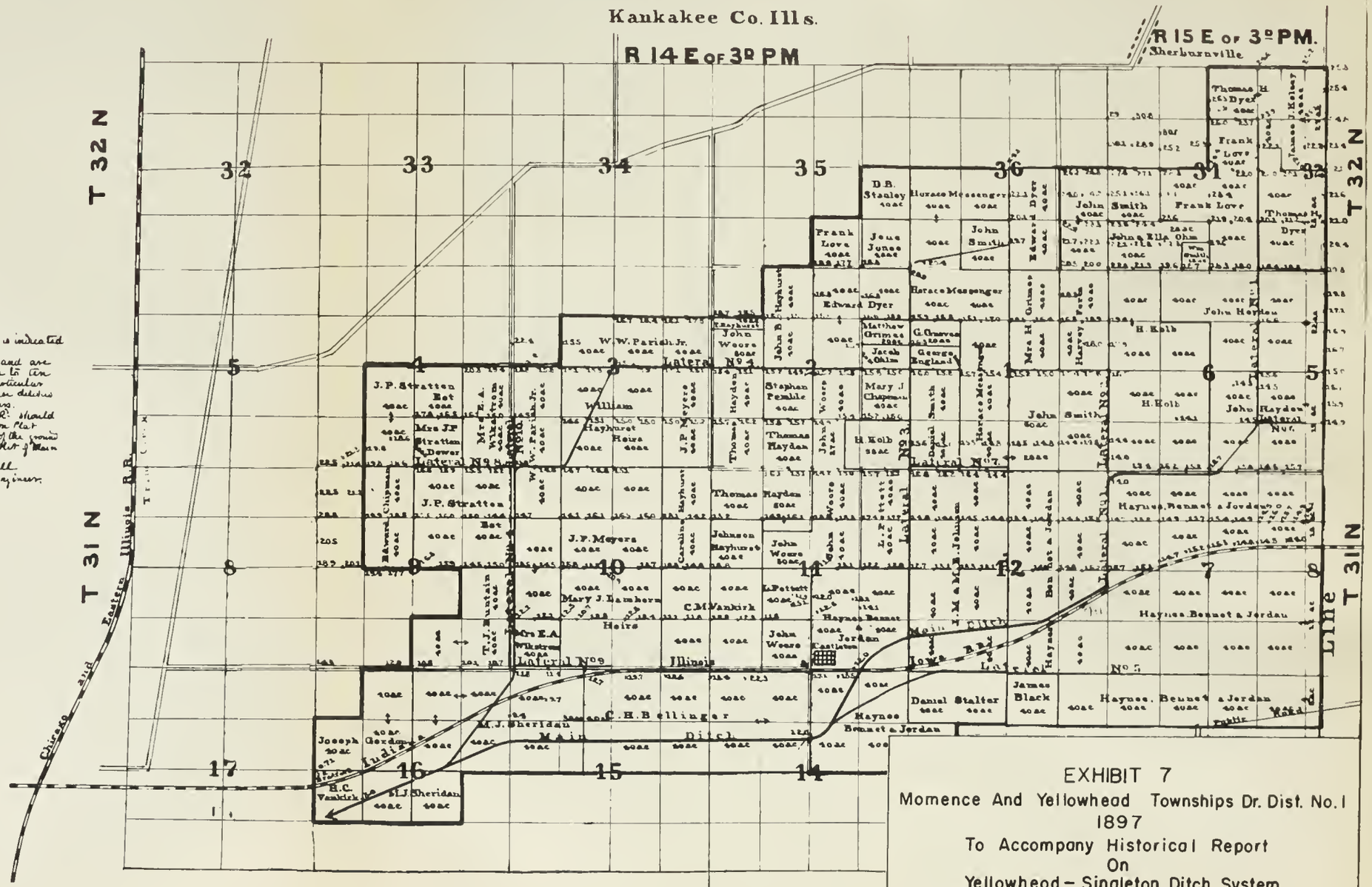


EXHIBIT 7

Momence And Yellowhead Townships Dr. Dist. No. 1

1897

To Accompany Historical Report

On

Yellowhead – Singleton Ditch System

STATE OF
DEPARTMENT OF PUBLIC

DIVISION OF WATERWAYS

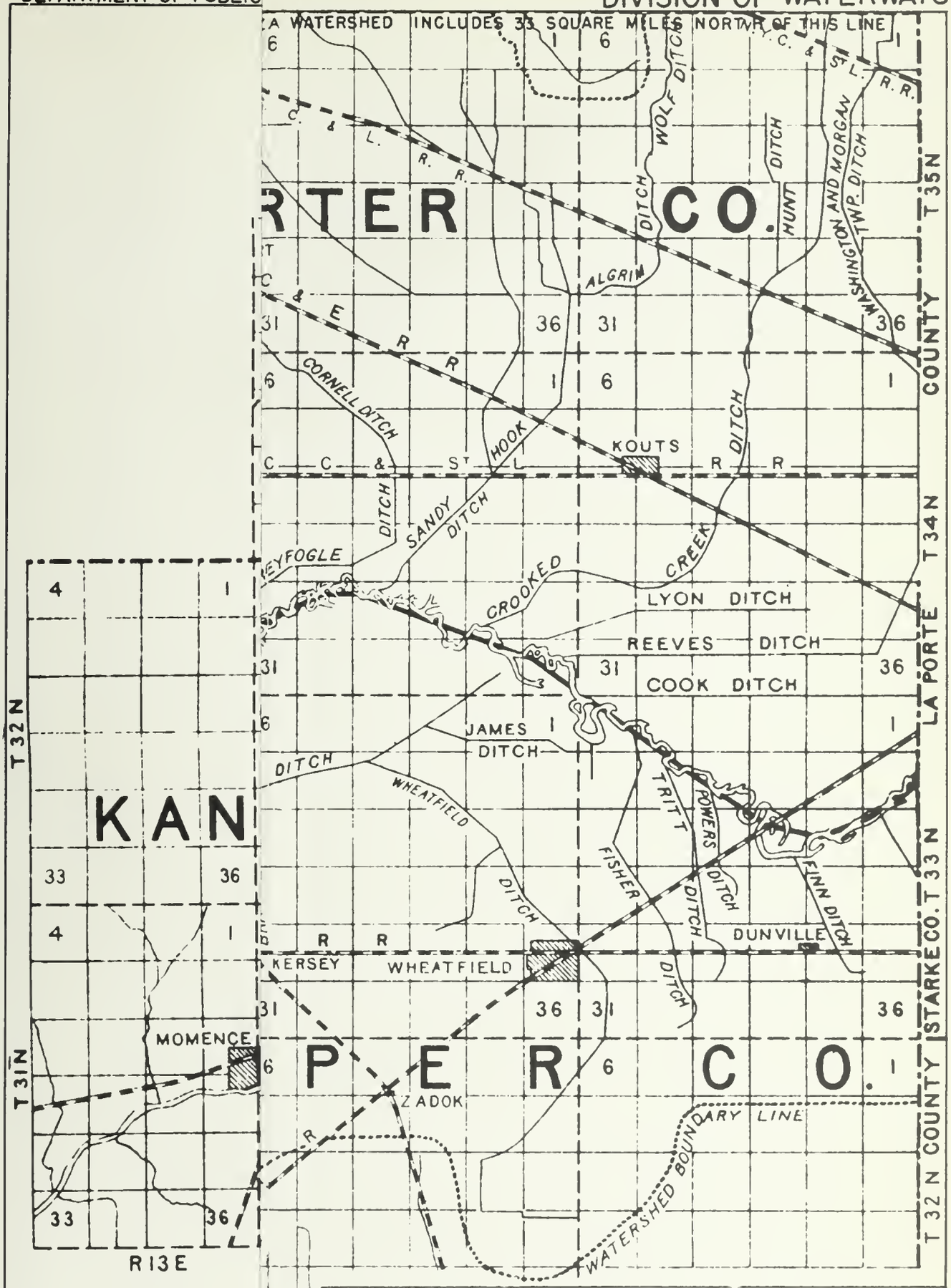


EXHIBIT 8
Map Of Drainage U.S.D.A. Circular 80, 1908
To Accompany Historical Report
On
Yellowhead Singleton Ditch System

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS

DIVISION OF WATERWAYS

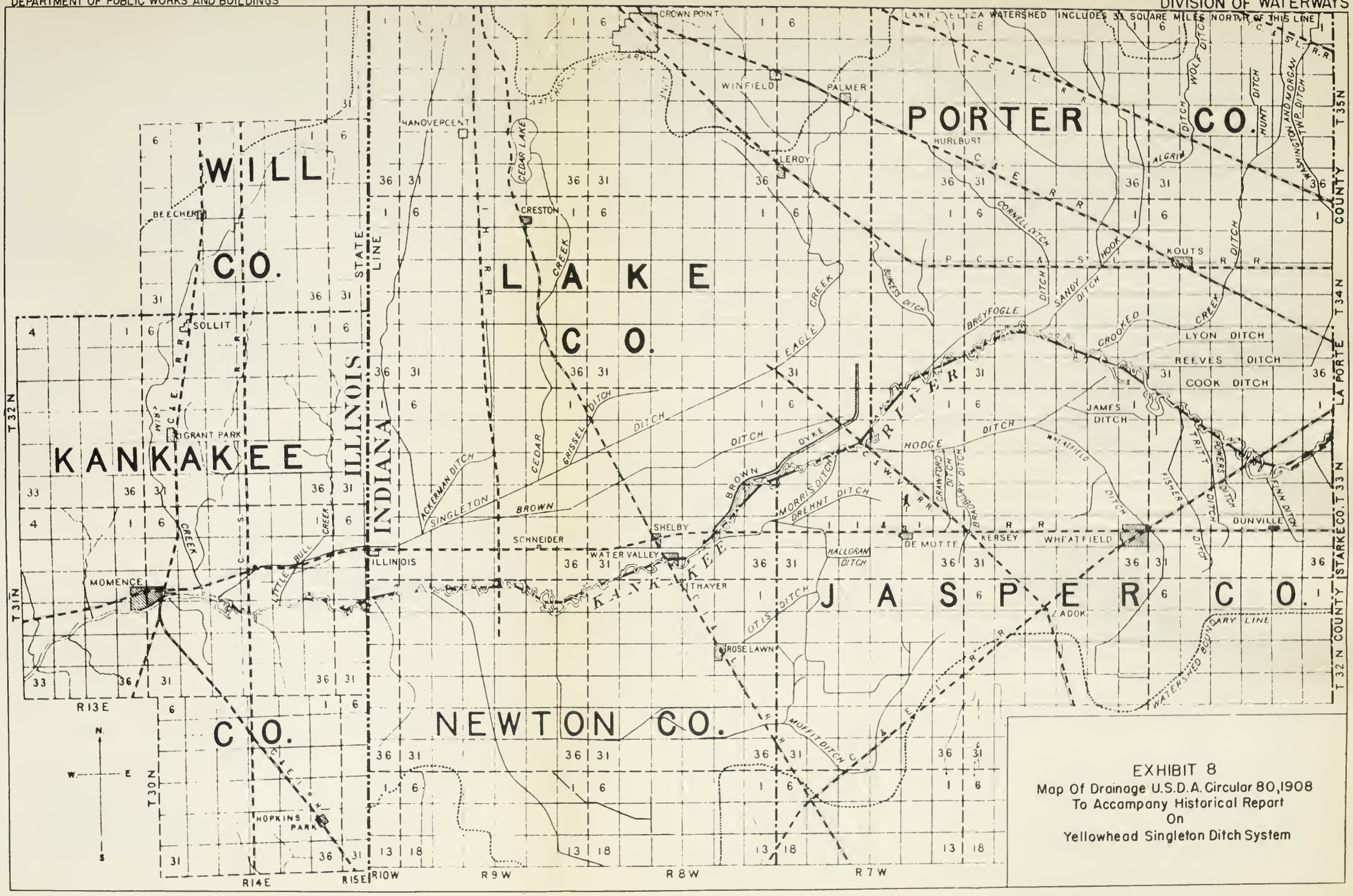


EXHIBIT 8
Map Of Drainage U.S.D.A. Circular 80, 1908
To Accompany Historical Report
On
Yellowhead Singleton Ditch System

DRAINAGE DISTRICT No. 1.

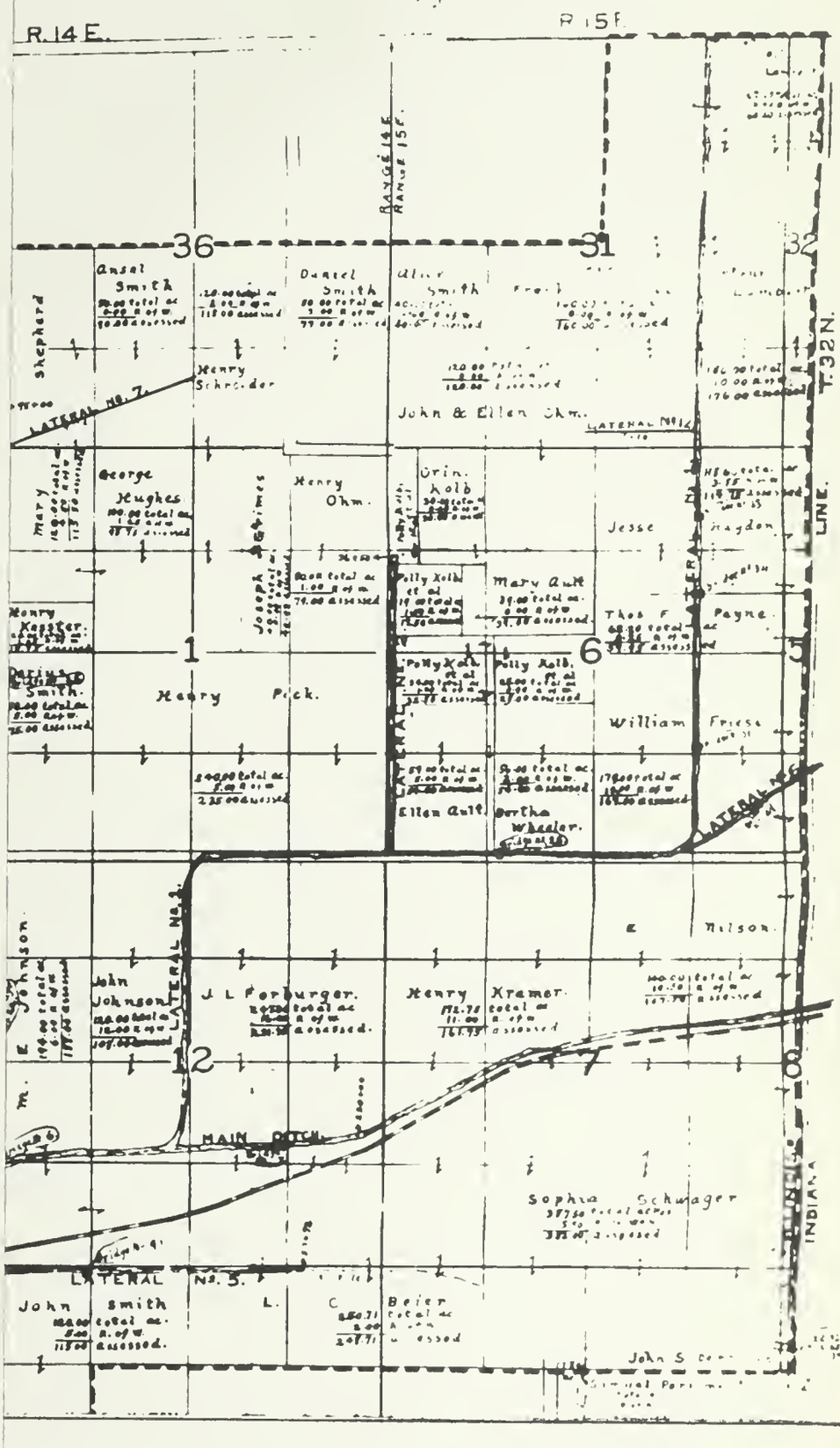


EXHIBIT 9

Momence And Yellowhead Townships Dr. Dist. No. 1

1914

To Accompany Historical Report

On

Yellowhead– Singleton Ditch System

PLAT OF THE MOMENCE & YELLOWHEAD TOWNSHIPS DRAINAGE DISTRICT No. I.

IN KANKAKEE COUNTY, ILL.

JUNE 25 - 1914.

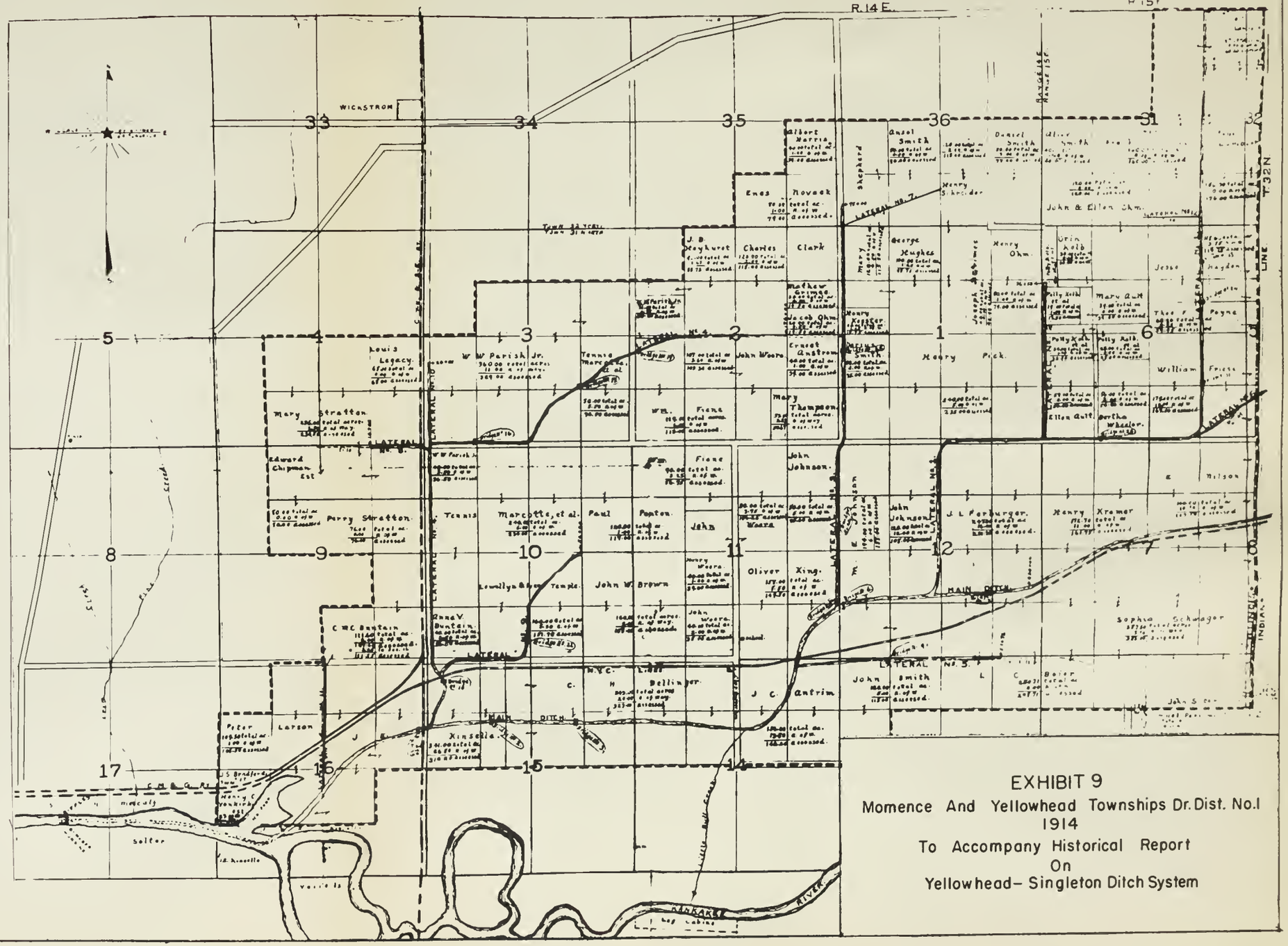


EXHIBIT 9
Momence And Yellowhead Townships Dr. Dist. No. I
1914
To Accompany Historical Report
On
Yellowhead - Singleton Ditch System

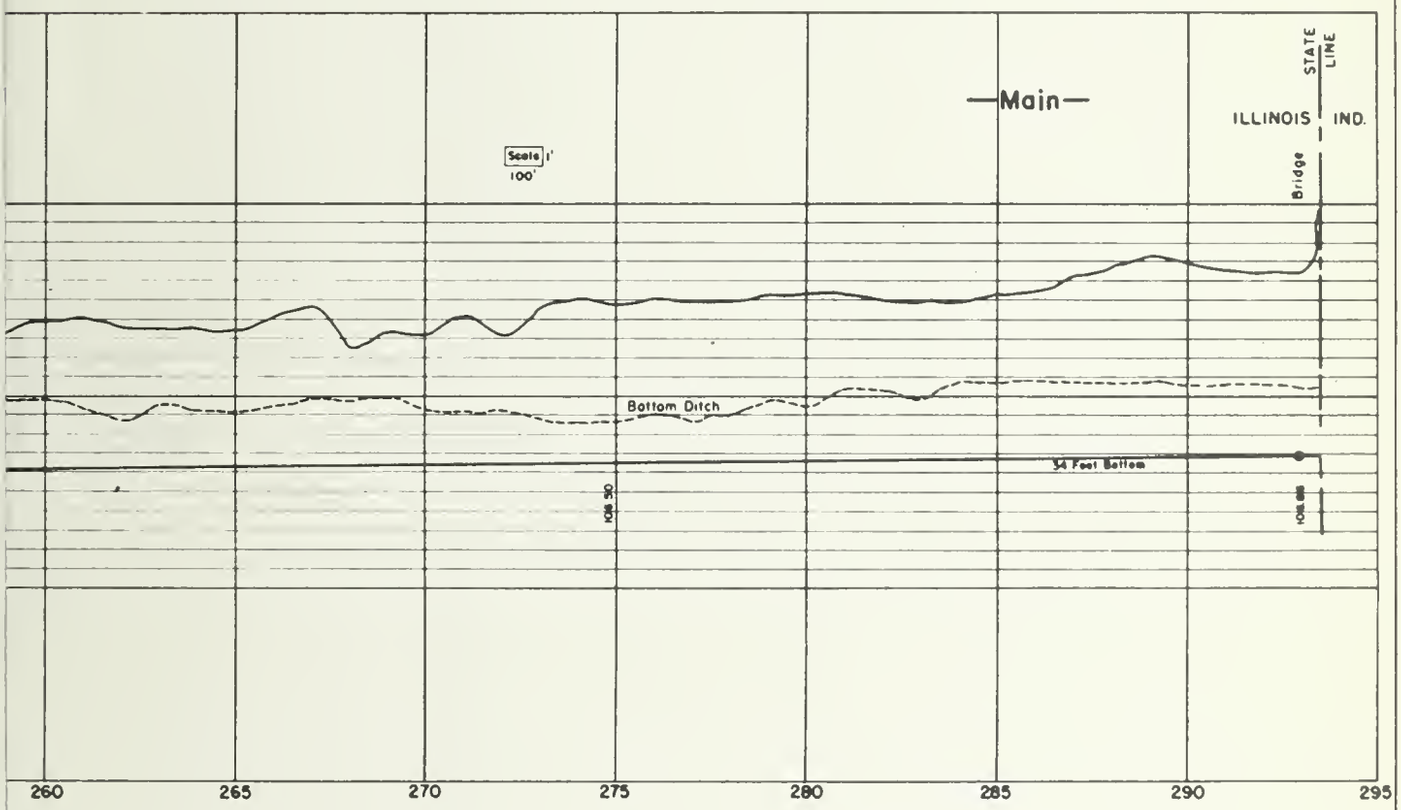
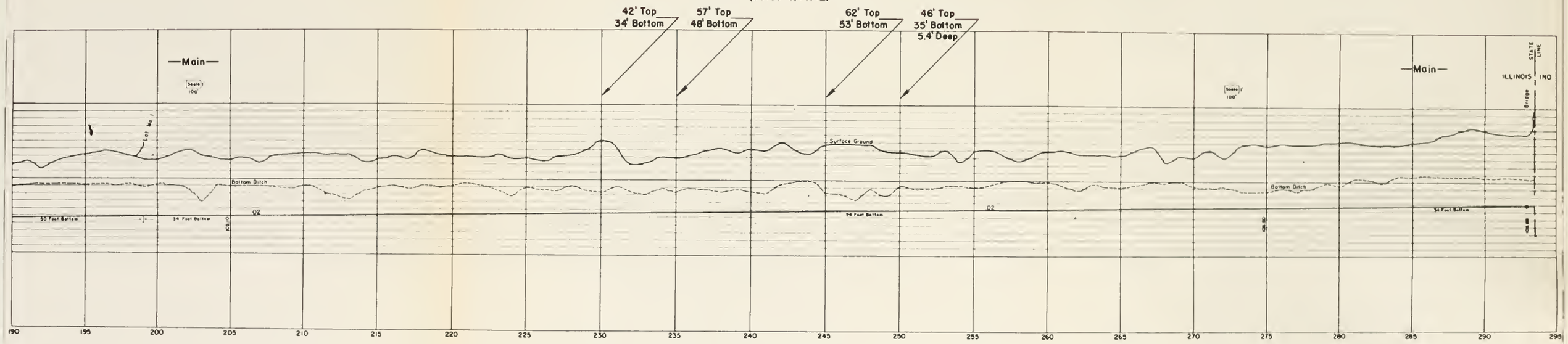


EXHIBIT 10
Momence And Yellowhead Twp. D.D.—1914 Profile
To Accompany Historical Report
On
Yellowhead-Singleton Ditch System

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS

DIVISION OF WATERWAYS

(Dimensions As Per Surveyors Fieldnotes)
(Dated 8/16/12)



PROFILES
OF THE
MOMENCE AND YELLOWHEAD TOWNSHIPS
DRAINAGE DISTRICT NO. 1
KANKAKEE COUNTY, ILLINOIS
L. C. Looker — County Surveyor
OCT 8 - 1912

EXHIBIT 10
Momence And Yellowhead Twp. D.D.–1914 Profile
To Accompany Historical Report
On
Yellowhead-Singleton Ditch System

GRANT OF RIGHT OF WAY.

WHEREAS certain landowners in the State of Indiana desire to execute certain drainage work in the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois, to-wit: To clean, deepen and widen what is known as the Singleton Ditch and a part of the main ditch of said drainage district, which main ditch is a continuation of said Singleton Ditch; said work is to begin at the Indiana-Illinois State line and extend southwesterly a distance of approximately Sixty-six hundred (6600) feet through Sections Seven (7) and Eight (8) of Township Thirty-one (31) North, Range Fifteen (15) East of the Third Principal Meridian, in the County of Kankakee and State of Illinois and through a part of Section Twelve (12), Township Thirty-one (31) North, Range Fourteen (14) East of the Third Principal Meridian, in the County of Kankakee and State of Illinois to station 230 on said main ditch; said main ditch and Singleton ditch are to be approximately fifty (50) feet wide on the bottom with slopes of one to one; the grade of the bottom of said main ditch after said work is completed shall not be higher than the grade established by the profiles filed on May 28, 1914 in the matter of the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois; excavated material to placed at least 20 feet back from edge of ditch; all of said work is to be confined to the present course of said Singleton Ditch and said main ditch; said work is to be completed before November 1, 1924.

EXHIBIT 11

THIS INDENTURE WITNESSETH THEREFORE, That the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois by its commissioners and J. L. Forburger, John D. Kramer, Exec. of Henry Kramer est. and Arthur Langellier the owners of the land through which said work is to be executed, do hereby grant to Leroy Hayden, Drainage commissioner of Indiana, and his successor or successors in office, the right to do the above described work in said Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois and the right to thereafter maintain said work.

Dated this 20th day of October, A. D. 1923.

Momence & Yellowhead Townships
Drainage District No. 1 of Kankakee County, Illinois, by

J. L. Forburger

J. M. Johnson

Norman Griffin

Commissioners of said district.

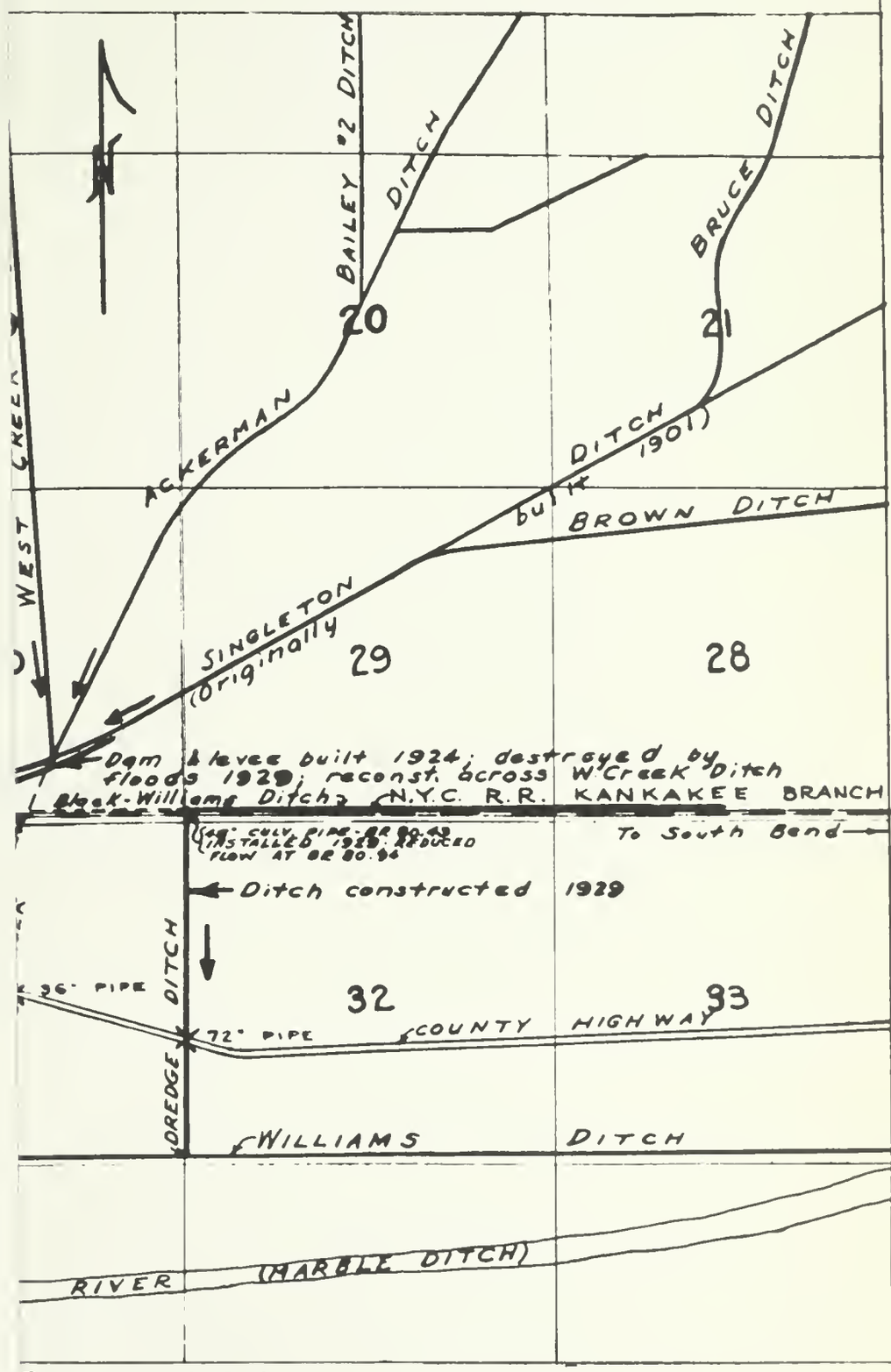
J. L. Forburger

John D. Kramer, Exc.

of Henry Kramer est.

Arthur Langellier.

Landowners.



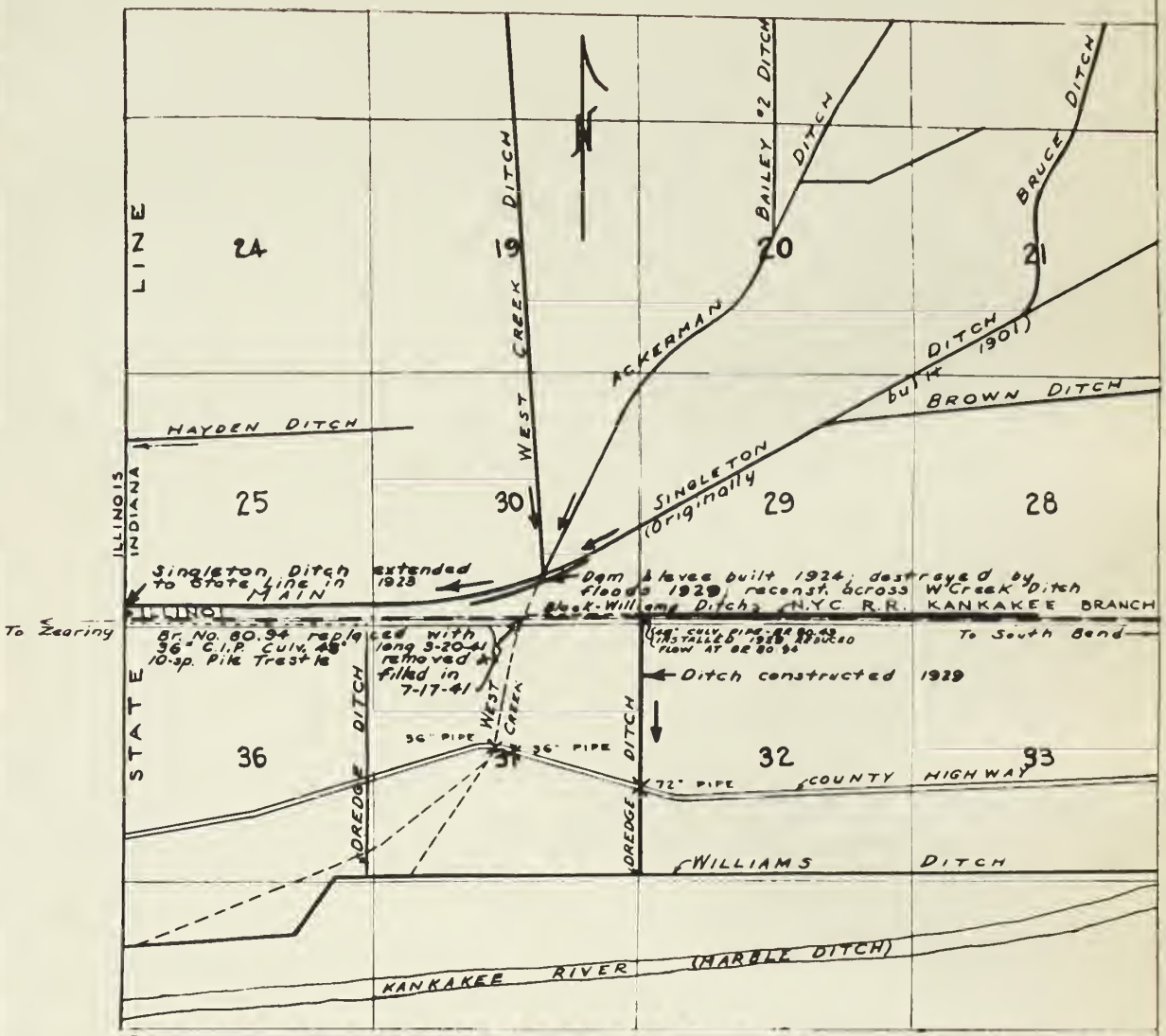
BR. No. 80.94 AT

101, INDIANA
OCT. 23, 1953

EXHIBIT 12
New York Central Railroad Sketch
To Accompany Historical Report
On
Yellowhead—Singleton Ditch System

STATE OF ILLINOIS
DEPARTMENT OF PUBLIC WORKS AND BUILDINGS

DIVISION OF WATERWAYS



DRAINAGE IN VICINITY OF BR. NO. 80.94 AT
WEST CREEK
Between SCHNEIDER & ILLINOI, INDIANA
1" = 1700'
OCT. 23, 1953

EXHIBIT 12
New York Central Railroad Sketch
To Accompany Historical Report
On
Yellowhead—Singleton Ditch System

C C P Y

State of Illinois)
County of Kankakee) SS

November 16, 1923

The commissioners of Momence and Yellowhead Townships met at Illinoi, Illinois. J. L. Forburger and J. M. Johnson were present. Norman Griffin was absent.

The object of the meeting was to meet with the landowners of Indiana and the commissioners of Singleton ditch relative to work proposed to be done in the main ditch of the Momence and Yellowhead District. The Indiana parties proposed that the Momence and Yellowhead District give them financial assistance in the construction of the proposed work. It was decided to give the matter further consideration and the meeting then adjourned.

/s/ Norman Griffin, Sec.

State of Illinois)
County of Kankakee) SS

November 21, 1923

The commissioners of Momence and Yellowhead District met at Grant Park, Illinois. All of the commissioners were present.

The object of the meeting was to consider the proposition made by the Indiana parties relative to the work proposed to be done in the main ditch of the Momence and Yellowhead District. Upon motion duly made and seconded it was decided to use Five Hundred (500.00) dollars of the annual repair fund for the repairing of the main ditch and J. L. Forburger was authorized to communicate this information to the committee representing the Indiana landowners.

The meeting then adjourned.

/s/ Norman Griffin, Sec.

EXHIBIT 13

COPY

State of Illinois)
County of Kankakee) SS

July 22, 1924
3:00 P. M.

The Commissioners of the Momence and Yellowhead Townships Drainage District No. 1 in Kankakee County met at the office of V. A. Parish in the city of Momence, Ill. All commissioners were present. The object of the meeting was to discuss with land owners from the State of Indiana the possibility of obtaining from the Indiana land owners whose land is adjacent to the main ditch some financial assistance in extending the cleaning of the main from the rock ledge in Sec. 12 to the outlet in the Kankakee River.

Only one of the interested land owners from Indiana, Mr. George Bailey, being present it was decided to adjourn the meeting until one week later with a view of getting a better attendance if possible of those interested in the project of cleaning the main ditch to the outlet.

The annual Repair Tax Report was prepared and signed. There being no further business the meeting stood adjourned.

/s/ Norman Griffin, Sec.

State of Illinois)
County of Kankakee) SS

July 29, 1924
3:00 P. M.

All three commissioners of the Momence and Yellowhead Drainage District #1 met at the office of V. A. Parish in the city of Momence to discuss with land owners from the State of Indiana the proposition of raising funds jointly for the purpose of extending the cleaning of the main ditch to the outlet in the Kankakee River. There were only two of the interested parties from Indiana present.

After considerable discussion it was found that it would be impossible to raise a sufficient amount of money by subscription or otherwise for the extension of this work and the commissioners of the district and the landowners from Indiana decided to give up the idea for the present.

There being no further business the meeting stood adjourned at 5:00 p. m.

/s/ Norman Griffin, Sec.

COPY

State of Illinois)
County of Kankakee) SS

February 17, 1926

The commissioners of the Momence and Yellowhead Drainage District No. 1 in Kankakee County met at the directors room of the Grant Park State Bank at Grant Park, Illinois. All the commissioners were present - 2:00 p. m.

The object of the meeting was to consider the question of giving some financial aid in helping certain organized land owners in Indiana in defraying the expense of removing a rock ledge in the Main ditch in Section 12 in the Momence and Yellowhead drainage District. The work of deepening and widening the said Main ditch has been nearly completed to the Indiana-Illinois State Line and permission granted to the Indiana landowners to extend the work in the Main ditch through the rock ledge in our district. The commissioners voted unanimously to contribute $500.00 toward the expense of removing the rock ledge in Section 12 provided the work would be done according to the plan agreed on.

No further business appearing the meeting stood adjourned at 5:00 p. m.

/s/ Norman Griffin, Sec.

State of Illinois)
County of Kankakee) SS

April 28, 1926

The commissioners of the Momence and Yellowhead Drainage District No. 1 in Kankakee County met with Mr. Goodyear at the office of V. A. Parish in Momence at 2:00 p.m. April 28, 1926 to discuss plans for relieving the situation at the junction of the Main ditch and West Creek about 1 1/2 miles east of the Indiana and Illinois State Line.

In the work recently done cleaning the Main ditch an embankment has been thrown up on the south bank which diverts the entire flow of water from the old West Creek channel into the channel of the Main ditch and flows through the Momence and Yellowhead Drainage District No. 1 instead of allowing the natural channel of West Creek to carry this water direct to the Kankakee River. The diversion of this water from its natural course is doing a great damage to our district and the commissioners of the Momence and Yellowhead Drainage District are of the unanimous opinion that steps should be taken at once to prevent if possible the dumping of a flood of water into our Main ditch that would naturally go direct to the Kankakee River after every heavy rain.

It was arranged that an appointment with Mr. Goodyear be made so that the commissioners could meet with him in the very near future

C O P Y

at the junction of West Creek and the Main ditch to go over the ground with him with a view of starting some legal action in the Federal Court to relieve this condition.

/s/ Norman Griffin, Sec.

State of Illinois)
County of Kankakee) SS

April 30, 1926

By appointment the commissioners of the Momence and Yellowhead Drainage District met with Mr. Goodyear at the junction of the Main ditch and West Creek 1 1/2 miles east of the Indiana-Illinois State Line at 2 o'clock p. m. for the purpose of inspecting conditions there.

The commissioners found that a high embankment had been thrown up on the south side of the Main ditch completely shutting off the water from a well defined channel of West Creek leading toward the Kankakee River thereby diverting the water entirely from its natural course into the Main ditch which carries a large volume of water into the Momence and Yellowhead Drainage District. This should be allowed to follow its natural course direct to the Kankakee River and relieve the district of this extra volume of water which is at the present time causing a great amount of drainage.

Mr. Goodyear agreed to undertake the task of working up a case on this matter in the Federal Court either at Danville, Illinois or Indianapolis, Indiana.

/s/ Norman Griffin, Sec.

State of Illinois)
County of Kankakee) SS

July 9, 1926

The commissioners of the Momence and Yellowhead Drainage District No. 1 met at the office of V. A. Parish in Momence at 8 p. m. - All present.

A letter was prepared addressed to Mr. Goodyear asking to proceed immediately with action in Federal Court against Indiana land owners in the matter of relieving the conditions at the junction of West Creek and the Main Ditch about 1 1/2 miles east of the Indiana-Illinois State Line - also to take the necessary steps in preparation for an additional assessment to do the work contemplated in the Kankakee River.

No further business meeting stood adjourned at 10:00 p.m.

/s/ Norman Griffin, Sec.

COPY

State of Illinois)
County of Kankakee) SS

April 17, 1928

The commissioners of the Momence and Yellowhead Drainage District No. 1 in Kankakee County - all commissioners present, met at Parish office 2:00 p. m., April 17, 1928.

The object of the meeting was to meet with other land owners of the district to discuss plans and possibly get suggestions as to the best methods of relieving flooded conditions existing in a great part of the district, more especially the extreme eastern part near the State line.

Besides the commissioners the following were present at this meeting - W. W. Parish, C. F. Hayden and Arthur Langellier.

It was the unanimous opinion of all present that the Main ditch should be cleaned at once and the commissioners voted to proceed at once to circulate a petition and take such other steps as are necessary to spread an assessment against all land in the district to raise funds with which to defray the expenses of cleaning and enlarging the Main ditch and the laterals so as to drain off the water from the lands of the district much more quickly than can be done under the present condition of the ditches.

The following accounts were paid.
To J. L. Forburger for services as commissioners to and including March 19, 1928 - $76.00
To Norman Griffin for services as commissioner to and including March 19, 1928 - $35.00
To J. M. Johnson for services as commissioners to and including March 19, 1928 - $51.00

Meeting adjourned at 5 p.m.

/s/ Norman Griffin, Sec.

COPY

State of Illinois)
County of Kankakee) SS

May 23, 1928

The commissioners of the Momence and Yellowhead Drainage District No. 1 in Kankakee County met at Delmar at 8:30 a. m., May 23-1928 with County Surveyor L. C. Looker. The object of the meeting was to go over the ditches and drains with the surveyor to ascertain if it could be practical and feasable to enlarge the Main ditch so as to have an 80 foot bottom in it instead of 40 feet as exists at present. After measuring the bridges it was found that all of them would have the necessary space to accommodate an 80 foot channel. The commissioners recommended that the attorney for the district, Mr. V. A. Parish, communicate immediately with proper officials of the New York Central R. R. Co. and request that present wooden bridge across the Main ditch just east of Edgetown be replaced with a single span steel bridge. The present bridge is an obstruction in the channel of the Main ditch having six bents of piling in the channel spaced only 14 feet apart causing a great deal of drift material at all stages of water to lodge against the piling thereby causing a hindrance to the flow of the water.

The commissioners employed Mr. L. C. Looker to proceed at once with work of preparing a preliminary estimate of the cost of work necessary to widen the Main ditch to 80 feet and also the cost of the work necessary in the several laterals.

All commissioners were present at this meeting and adjourned at 4:00 p. m.

/s/ Norman Griffin, Sec.

State of Illinois)
County of Kankakee) SS

June 24, 1929

A meeting of the commissioners of the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois was held at the office of V. A. Parish on the 24th day of June 1929 at two o'clock p. m. All of the commissioners were present. J. L. Forburger presided and J. B. Hayden acted as Secretary. Henry Kister an Indiana Attorney was also present.

The purpose of the meeting was to discuss with Mr. Kister the Indiana conditions affecting the drainage conditions in the Momence and Yellowhead District and to consider the best course to pursue in order to remedy these conditions.

It was moved, seconded and carried that the Momence and Yellowhead commissioners arrange for a meeting with Indiana landowners to consider the project of enlarging the Main ditch of the Momence and Yellowhead District.

The meeting adjourned at four o'clock P. M.

/s/ Jesse B. Hayden, Secretary

C O P Y

State of Illinois)
County of Kankakee) SS

June 28, 1929

A meeting of the commissioners of the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois was held at the Lowell National Bank at Lowell, Indiana at eight o'clock p. m. All of the commissioners were present. J. L. Forburger, presided and J. B. Hayden acted as Secretary.

This was a meeting of the Momence and Yellowhead commissioners with prominent landowners in Indiana for the purpose of considering a drainage project for the benefit of Indiana land and lands lying in the Momence and Yellowhead District. It was decided that the Indiana landowners present at this meeting should call a meeting of the majority of the landowners affected by the proposed project for the purpose of ascertaining their attitude concerning the work. The meeting adjourned at 10 o'clock P. M.

/s/ Jesse B. Hayden, Sec.

State of Illinois)
County of Kankakee) SS

July 6, 1929

A meeting of the commissioners of the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois was held at the office of V. A. Parish on the 6th day of July 1929 at 8 o'clock P. M. All of the commissioners were present. J. L. Forburger presided and J. B. Hayden acted as Secretary.

The purpose of the meeting was to consider the Indiana drainage project and to consider the advisability of collecting the repair tax this coming year.

The Secretary reported that George Bailey, one of the Indiana landowners, advised him that a meeting of Indiana landowners was held since the meeting of June 28th, that 30 or 40 were present and that the attitude of those present toward helping pay the cost of enlarging the Main ditch of the Momence and Yellowhead District was not favorable; but that it was nevertheless decided that Mr. Bailey appoint a Committee to meet again in the near future with the Momence and Yellowhead commissioners.

It was moved, seconded and carried that the attorney for the district prepare a report as to the condition of the drains and ditches in the district for the purpose of having an annual repair tax collected for the ensuing year.

The meeting adjourned at nine o'clock P. M.

/s/ Jesse B. Hayden, Sec.

COPY

State of Illinois)
County of Kankakee) SS

July 11, 1929

A meeting of the commissioners of the Momence and Yellowhead Township Drainage District No. 1 of Kankakee County, Ill. was held at the office of V. A. Parish on the 11th day of July, 1929 at two o'clock P. M. All of the commissioners were present. J. L. Forburger presided and J. B. Hayden acted as Secretary.

The purpose of the meeting was to confer with Indiana landowners and Attorney Kister from Princeton, Indiana relative to the Indiana situation in so far as it affects the drainage in the Momence and Yellowhead District. A number of Indiana landowners are present and Mr. Kister was also present. The situation was discussed, but no definite conclusion was reached. The Indiana landowners stated that if the Illinois Drainage Districts would procure a right of way from the State Line to Momence, Indiana authorities would clean the river. However no definite action was taken.

The commissioners signed the report of conditions of drains and ditches.

The meeting was adjourned at five P. M.

/s/ Jesse B. Hayden, Secretary

State of Illinois)
County of Kankakee) SS

September 17, 1929

A meeting of the commissioners of the Momence and Yellowhead Townships Drainage District No. 1 Kankakee County, Illinois was held at the office of V. A. Parish on the 17th day of September, 1929 at 8 o'clock P. M. All of the commissioners were present. J. L. Forburger presided and J. B. Hayden acted as Secretary.

The purpose of the meeting was to organize the new board for the coming year. The Bond of the commissioners was renewed and the newly appointed commissioner, J. M. Johnson executed his oath. J. L. Forburger was elected chairman and J. B. Hayden was elected secretary.

The attorney for the district was instructed to make an appointment with L. C. Looker to meet the commissioners for the purpose of trying to cut down the estimate for the proposed work. He was also instructed to write Mr. Kister relative to filling the upper end of the Main ditch and also concerning starting a suit against the Indiana landowners to compel them to open up West Creek.

The bill of Almond Hayburst for $3.00 for repairing Lateral No. 11 was presented and allowed and Order issued.

The meeting adjourned at ten o'clock P. M.

/s/ Jesse B. Hayden, Secretary

C O P Y

State of Illinois)
County of Kankakee) ss

October 2, 1929

A meeting of the commissioners of the Momence and Yellowhead Townships Drainage District No. 1 Kankakee County, Ill. was held at the office of V. A. Parish on the 2nd day of October, 1929 at 8 o'clock P. M. All of the commissioners were present, J. L. Forburger presided and J. B. Hayden acted as Secretary.

The purpose of the meeting was to pay Mr. Looker some on his account and consider filing suit against the Indiana landowners. It was moved, seconded and carried that Mr. Looker be paid $500.00 on his account. An order was thereupon issued for this amount and delivered to Mr. Looker.

It was moved, seconded and carried that V. A. Parish be constructed to proceed with suit against Indiana landowners relative to opening West Creek and to employ Henry Kister of Princeton to assist him in said matter.

The meeting adjourned at 9 P. M.

/s/ Jesse B. Hayden, Secretary

State of Illinois)
County of Kankakee) ss

November 4, 1929

A meeting of the commissioners of the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois was held at the office of V. A. Parish on the 4th day of November, 1929 at 8 o'clock P. M. All of the commissioners were present. J. L. Forburger presided and J. B. Hayden acted as secretary.

The purpose of the meeting was to consider the report of V. A. Parish concerning his conference with Kister. V. A. Parish reported that he had made arrangements with Mr. Kister to assist in the preparation of the suit and the filing of the suit for $200.00. His action in this regard was approved by the unanimous vote of the commissioners. It was moved, seconded and carried that Mr. Kister be paid $100.00 as a retainer and a balance of $100.00 as soon as the suit was ready to file. Thereupon order for $100.00 payable to Henry Kister was issued and sent to him.

The bill of V. A. Parish for services rendered as attorney in the sum of $18[illegible].52 was presented and allowed and order issued therefor. This bill did not cover any services rendered in connection with the conservancy district.

The bill of Lewis Hawk for $10.00 for printing Reply Brief in conservancy district case was presented and allowed and order issued therefor.

The meeting adjourned at 1[illegible] P. M.

/s/ Jesse B. Hayden, Secretary

C O P Y

State of Illinois)
County of Kankakee) ss

May 13, 1930

A meeting of the commissioners of the Momence and Yellowhead Townships Drainage District No. 1 Kankakee County, Illinois was held at the office of V. A. Parish on the 13th day of May, 1930, at eight o'clock P. M. All the commissioners were present. J. L. Forburger presided and Jesse B. Hayden acted as Secretary.

The purpose of the meeting was to go over the Bill of Complaint to be filed against the Indiana landowners. The bill as corrected was examined and signed and V. A. Parish, attorney for the district was instructed to file said bill.

The meeting adjourned at 9:30 P. M.

/s/ Jesse B. Hayden, Secretary

State of Illinois)
County of Kankakee) ss

March 1, 1939

A meeting of the commissioners of the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois was held at the office of V. A. Parish at 2 o'clock P. M. on March 1, 1939.

All the commissioners were present. J. L. Forburger presided and Jesse B. Hayden acted as Secretary.

The purpose of this meeting was to consider the matter cleaning out the main ditch of the district in cooperation with Indiana authorities.

Henry Schultz, a farmer from Indiana was present soliciting the cooperation of this district upon the project of cleaning the main ditch of this district with the assistance of Indiana authorities. It was decided that a further meeting would be held in the near future with the proper authorities from Indiana to give the matter further consideration. Mr. Schultz was to make arrangements for this meeting.

The matter of adding territory to the west side of the district as requested by Peerbolt was discussed. It was concluded that any action of this kind should originate among the landowners themselves, and the attorney for the district was instructed to convey this information to Mr. Peerbolt.

The complaint of the Connecticut Mutual Life Insurance Company concerning the culvert on the north side of the Langellier farm, the road ditches, the condition of the main ditch, and the cut in the ditch bank were all discussed. The attorney for the district was instructed to write the agent for the company concerning these matters.

The delinquent Peerbolt and Breckenridge taxes were also discussed. The attorney for the district was instructed to take immediate action on the on the matter of collecting these assessments. Thereupon the meeting

adjourned upon motion duly made and seconded.

Secretary

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

MOMENCE & YELLOWHEAD TOWNSHIPS DRAINAGE DISTRICT NO. 1, OF KANKAKEE COUNTY, ILLINOIS, et al	)	No. 285
	)	in Equity

vs.

E.
FRANK Nelson, et al

Entry for: July 1, 1944

Memorandum opinion of the court filed. Defendants' motions to dismiss granted. Cause dismissed. Exception granted plaintiff.

Luther M. Swygert

Judge, U. S. District Court

EXHIBIT 14

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

MOMENCE & YELLOWHEAD TOWNSHIPS
DRAINAGE DISTRICT NO. 1 of
KANKAKEE COUNTY, ILLINOIS, et al — No. 285

vs. — in Equity

FRANK E. NELSON, et al

MEMORANDUM OPINION

One of the grounds for dismissal advanced by the defendants is that because the complaint alleges that the drainage system and dams in question were constructed by authority of a court proceeding under provisions of Indiana Statutes covering the construction of drainage systems the doctrine of damnum absque injuria applies. The motion to dismiss are granted on that ground.

It is alleged in the complaint that the Singleton ditch was reconstructed pursuant to a petition instituted in the Lake Circut Court under the provisions of an Act of the Indiana Legislature. (Chapter 252 of the Acts of the General Assembly of Indiana of 1907 and acts amendatory and supplemental thereto). These provisions require the court upon the granting of a petition for drains to refer the matter to drainage commissioners who shall "definitely determine * * * the termini and route, location and character of the proposed work. Section 6169 Burns Annotated Indiana Statutes 1926 Revision. It is therefore apparent that except for the institution of the proceedings which culminated in the construction of the drainage system described in plaintiffs' complaint, the landowners who benefited by such construction had no part in the determination of the course of the drain. It would also appear that it was only the petitioning landowners that had even that connection with those proceedings in the State court. The drainage commissioners have the sole and exclusive authority to determine the "route, location and character" of the drain. They "are in the nature of a jury to whom is referred certain facts for their determination."

Thompson v. Ryan 108 N. E. 98.

The landowners who benefit by the construction of a drainage system effected by such proceedings should not be held liable for damages which result from acts and proceedings authorized by statute since they are no more responsible for the cause of such damage than are the landowners who suffer the damage. Harms that flow from acts performed in strict conformity with and which are authorized by legislative enactments are damnum absque injuria. Scoopmire v. Taflinger, et al 52 N. E. (2nd) 728.

That the reliefs or remedies for the wrongs which the plaintiffs complain are legislative rather than injunctive or claims for damages from non-negligent landowners is further indicated by legislative enactments that existed at the very time the Singleton ditch was reconstructed. I refer to Sections 6198-6217 Burns Annotated Indiana Statutes 1926 Revision dealing with the construction, widening, deepening or changing of ditches; drains and water courses that cross state lines. Those or similar enactments have continued to be and are now part of the laws of the State of Indiana.

Luther M. Swygert

Judge, U. S. District Court

Hammond, Indiana

July 1, 1944

AMENDED AND SUPPLEMENTAL BILL OF COMPLAINT

The plaintiffs, MOMENCE AND YELLOWHEAD TOWNSHIP DRAINAGE DISTRICT NO. 1 OF KANKAKEE COUNTY, ILLINOIS, MARTIN JOHNSON, J. M. JOHNSON, ALBERT JOHNSON, JESSE HAYDEN AND HAROLD BEIER, individually and as Commissioners of Momence and Yellowhead Township Drainage District No. 1 of Kankakee County, Illinois, John Pinsack, as Highway Commissioner of the Town of Momence, Illinois, Henry Schultz, Theodore Johnson and OSCAR JOHNSON, by Varnum A. Parish, Harold V. Snyder and Thomas J. Linane, their attorneys, complain of the defendants FRANK E. NELSON & EMELINE NELSON et al (repeat defendants names, Page 3)

1.

That at all times hereinafter mentioned the plaintiff, MOMENCE AND YELLOWHEAD TOWNSHIP DRAINAGE DISTRICT NO. 1 of Kankakee County, Illinois, was and still is a corporation and body politic; that it was organized on April 5, 1897, under and pursuant to an Act of the General Assembly of the State of Illinois, entitled "An Act to provide for the construction, reparation and protection of drains, ditches and levees across the lands of others for agricultural, sanitary and mining purposes, and to provide for the organization of drainage districts", approved and in force May 29, 1879, and that its main office and place of business is in Kankakee County, in the State of Illinois.

That the plaintiffs, MARTIN JOHNSON AND J. N. JOHNSON, are residents of the State of Illinois, and are now and have been continuously for more than thirteen years last past each the owner of separate tracts of real estate, consisting of agricultural lands located and situate in the Momence and Yellowhead Township Drainage District No. 1 of Kankakee County, Illinois. That the plaintiffs, Albert JOHNSON, JESSE HAYDEN AND HAROLD BEIER, individually and Theodore JOHNSON, AND OSCAR JOHNSON are all owners of separate tracts of land located in the State of Illinois within said Momence and Yellowhead township Drainage District No. 1. That the plaintiff, John Pinsack, as Highway Commissioner of the town of Momence, Illinois, is now the duly appointed, qualified and acting Highway Commissioner of the town of Momence, Illinois and that he has been such Highway Commissioner for more than one year last past, and that he is and has been during all the times herein mentioned a resident of the State of Illinois, and that as such Highway Commissioner he has charge of the jurisdiction over the public highways of the town of Momence, and that the greater part of said Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois, is located and situate in said town of Momence.

II

That the plaintiffs are informed and believe and state the fact to be

that the defendants FRANK E. NELSON & EMELINE NELSON et al
(Page)
are owner and owners of separate tracts of real estate in Lake County, Indiana.

That the defendant, BOARD OF COMMISSIONERS of Lake County, Indiana, has control of and jurisdiction over the public highways and county of highways in said Lake County, Indiana.

III

That the said Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois, contains approximately eight thousand (8000) acres of agricultural lands and is traversed by public highways. It lies immediately west of the Illinois-Indiana State line in Kankakee County, Illinois. Its east boundary coincides with the Illinois-Indiana State Line and begins at a point about one and one-half miles north of the Kankakee River, and extends north a distance of three and one-fourth miles. Its southern boundary is about one-half mile north of the Kankakee River. Its west boundary is approximately five miles west of the Illinois-Indiana State Line. A main ditch extends through it from its east line in a general southwesterly direction to its west line. The said Main Ditch in said district begins at the Illinois-Indiana State Line at a point about forty (40) rods north of the center of the east boundary line of fractional section eight (8), township thirty-one (31) north, range fifteen (15) east, of the 3rd P. M. and runs in a general southwesterly direction to the extreme southwest corner of the district, a distance of approximately seven (7) miles, and there empties in to the Kankakee River about two (2) miles east of the city of Momence, Illinois. Lateral ditches have also been constructed in said district and empty into said Main Ditch, and said agricultural lands and said public highways in said district drain into and through said Main Ditch and laterals.

IV

That heretofore and for many years prior to this time a certain drain was petitioned for under and pursuant to an Act of the General Assembly of the State of Indiana, and entitled "An Act concerning drainage, and repealing laws in conflict", approved March 11, 1907, the same being Chapter 252 of the Acts of the General Assembly of the State of Indiana of 1907, and Acts Amendatory thereof and Supplemental thereto, and that said drain was established and constructed. That said Singleton Ditch has its beginning near the line dividing Lake and Porter Counties, in the State of Indiana, and extended in a general southwesterly direction to the intersection of said ditch with West Creek about two miles east of the Indiana and Illinois State Line, and thence along said West Creek in a southerly direction to the south line of the right-of-way of the New York Central Railroad to about one hundred feet west of the northwest corner of the northwest quarter of Section thirty-one (31), township thirty-two (32), range nine (9) and thence in a southwesterly course and

emptying into the Kankakee River about one-half mile east of the Indiana and Illinois State Line in Section one (1), township thirty-one (31), range ten (10). That thereafter pursuant to a petition filed on the 24th day of January, 1916, in Lake Circuit Court of Indiana, by Patrick J. Carlin Lake Agriculture Company, Indiana Truck Farm Company, Henry F. Chambers, Bernis W. Sherman, and Frank R. Patchett, such proceedings were had in the matter of said petition as that said Singleton Ditch was reconstructed, and that instead of following said West Creek and emptying into said Kankakee River as it did originally, it was constructed in a southwesterly direction to intersect said Main Ditch of said Momence and Yellowhead Township Drainage District No. 1 at the Indiana-Illinois State Line. That said reconstructed Singleton Ditch has a bottom width of sixty (60) feet, and is approximately fifteen (15) feet deep. That said Singleton Ditch and its laterals and tributaries drain approximately two hundred (200,000) thousand acres of agricultural land, which lie along the western part of Indiana, north of the Kankakee River, in said Lake. Porter and Jasper Counties, in the State of Indiana, and drain public highways and county highways in said counties, and that the waters from said lands and highways drain into and flow through said reconstructed Singleton Ditch, and discharge into the said Main Ditch extending through said Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois.

V

That the main ditch and laterals thereto have been constructed in the said Momence and Yellowhead Townships Drainage District No. 1, of Kankakee County, Illinois, and that said Main Ditch at the Indiana - Illinois State Line has a bottom width of forty (40) feet, and is approximately fifteen (15) feet deep, and said Main Ditch extends in a southwesterly direction through said Momence and Yellowhead Townships Drainage District No. 1 and empties into the Kankakee River, as aforesaid, about two miles east of the City of Momence, Illinois; and that the water from said reconstructed Singleton Ditch empties into and has its outlet into and through said Main Ditch of said Momence and Yellowhead Township Drainage District No. 1; that West Creek Ditch is a lateral to said reconstructed Singleton Ditch, beginning more than five (5) miles north of said Singleton Ditch, and running in a southerly direction and intersecting said Singleton Ditch about two (2) miles east of the Indiana-Illinois boundary line. That said West Creek Ditch originally extended south and had its outlet into Kankakee River, and that originally said Singleton Ditch intersected said West Creek Ditch and the waters from said Singleton Ditch followed said West Creek Ditch to the south line of the right-of-way of the New York Central Railroad to about one hundred (100) feet, west of the northwest corner of the northeast quarter of Section thirty-one (31), township thirty-two (32), range nine (9), and thence in a southwesterly course and emptying into the Kankakee River about one-half mile east of the Indiana-Illinois State Line, in Section one (1).

township thirty-one (31), range ten (10). That thereafter said Singleton Ditch was reconstructed and instead of following said West Creek Ditch and emptying into said Kankakee River, as aforesaid, was constructed in a southwesterly direction to intersect said Main Ditch of said Momence and Yellowhead Township Drainage District No. 1 as aforesaid, at the Indiana-Illinois State Line, and that thereafter a dam was constructed in and across said West Creek Ditch on the south side of said Singleton Ditch, which prevents the water from discharging southward through said West Creek into the Kankakee River and diverts and forces the water coming from the north through said West Creek into and through said Singleton Ditch and thence into said Main Ditch of said Momence and Yellowhead Townships Drainage District No. 1. That one of the laterals of said Singleton Ditch is a ditch known as the "Bailey Ditch", and that it was constructed after said Singleton Ditch had been constructed; that said Bailey Ditch runs in a southwesterly direction and empties into the Singleton Ditch at the confluence of West Creek with the Singleton Ditch; that said West Creek is a stream approximately one hundred (100) feet in width, and that said Bailey Ditch is a stream approximately thirty (30) feet in width; that another of the laterals of said Singleton Ditch is a ditch known as the "Brown Ditch". That said Brown Ditch is an artificial drain, and that it begins approximately one and one-half miles northeast of where it crosses the eastern boundary line of Section twelve (12), township thirty-two (32), range eight (8) west, and runs thence in a southwesterly direction to where it intersects with said Singleton Ditch, approximately one mile east of the intersection of the Singleton Ditch and West Creek. That said Brown Ditch is a large ditch, to wit: approximately 60 feet in width, and 15 feet in depth at the point where it empties into said Singleton Ditch, and that be reason of the construction of said dam in and across said West Creek the waters from said West Creek and Bailey Ditch and Brown Ditch, and Singleton Ditch are now diverted and discharged into the Main Ditch of the said Momence and Yellowhead Townships Drainage District No. 1. That said dam in and across said West Creek was first constructed in the year 1923, and that afterwards in 1929 said dam was destroyed by floods and washed away and was thereafter reconstructed and replaced in and across said West Creek Ditch so that now the water coming through said Bailey Ditch and West Creek Ditch and Brown Ditch and Singleton Ditch is discharged through said Singleton Ditch into said Main Ditch of said Momence and Yellowhead Townships Drainage District No. 1. That said Main Ditch of said Momence and Yellowhead Townships Drainage District No. 1 is now out of repair and is too small and is wholly inadequate to carry the water, which drains into it from said Momence and Yellowhead Drainage District No. 1, and which is discharged into it from said Singleton Ditch, and by reason thereof said agricultural lands and the public highways located and situate in said Momence and Yellowhead Townships Drainage District No. 1, of Kankakee County, Illinois, are overflowed and inundated and in times of floods and highwater are submerged with water discharged into said Main Ditch from said Singleton

Ditch and its said lateral ditches and situate in Lake County, in the State of Indiana, and owned and controlled by the defendants residing in said Lake County, Indiana: That said Main Ditch in said Momence and Yellowhead Townships Drainage District No. 1, should be repaired and cleaned out and enlarged in order to carry the water, which drains into it from said district and the additional water from said Singleton Ditch and said West Creek Ditch and said Bailey Ditch and said Brown Ditch, and the tributaries of said ditches, and if the same is not repaired and cleaned out and enlarged and the capacity thereof increased so that it can carry the drainage from said district and the additional water discharged into it from said Singleton Ditch, and its said lateral ditches, the same will continue to overflow and inundate and submerge the lands and highways in said Momence and Yellowhead Townships Drainage District No. 1, with water discharged from said Singleton Ditch and its said lateral ditches, and the lands and highways situate and located in said Lake County, as aforesaid, and crops growing on said lands in said Momence and Yellowhead Townships Drainage District No. 1, including the lands of said named plaintiffs, Martin Johnson and J. M. Johnson, will overflow and be destroyed, and that the public highways in said Momence and Yellowhead Drainage District No. 1 will overflow and become impassable, and are now impassable, and that the public highways in said town of Momence, Illinois, will overflow and become impassable, and are now impassable.

That is said dam in and across said West Creek Ditch was removed and the water from said Singleton Ditch and said West Creek Ditch and said Bailey Ditch and Brown Ditch permitted to discharge through said West Creek Ditch south into said Kankakee River, said overflow conditions in said Momence and Yellowhead Townships Drainage District No. 1 would be relieved and prevented.

That said Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois, does not have sufficient funds to repair and clean out and sufficiently enlarge said Main Ditch through said District so as to make it adequate and of sufficient size and carrying capacity to carry the drainage of said District, which drains into it, and in addition thereto to carry the water discharged into it from said Singleton Ditch and its said laterals, and the lands and highways situate in said Lake County, Indiana, which drain into said Singleton Ditch, and its laterals, and that said Momence and Yellowhead Townships Drainage District No. 1 cannot levy funds sufficient to make said improvement and enlargement of said Main Ditch from the lands and highways situate and draining into it in said district.

That said dam constructed in and across said West Creek Ditch, as aforesaid, was constructed and is being maintained by the defendants without sanction or authority of law, and without sanction or authority from the plaintiffs or either of them, and will continue to be maintained by the defendants and will remain in and across said West Creek Ditch,

and will continue to force the water in said Singleton Ditch and its said lateral ditches to discharge into said Main Ditch in said Momence and Yellowhead Townships Drainage District No. 1.

That as a result of the construction of the said Singleton Ditch from the point where it was and is intersected by said West Creek Ditch to the Indiana-Illinois State Line, and the construction of said dam in and across said West Creek Ditch south of said Singleton Ditch, the water and drainage from the lands and highways of the defendants situate in said Lake County, Indiana, which enter and pass into and are carried by and through said Bailey Ditch, Brown Ditch, West Creek Ditch and Singleton Ditch, are wrongfully and unlawfully diverted and carried and discharged into the Main Ditch passing through said Momence and Yellowhead Townships Drainage District No. 1, of Kankakee County, Illinois, and because of the inadequacy and incapacity of said Main Ditch through said Momence and Yellowhead District to carry the drainage from said District and the water carried to it by said Singleton Ditch and the said laterals thereto, as aforesaid, said water carried and discharged through and by said Singleton Ditch and the said laterals thereto overflows and inundates the lands and highways of the plaintiffs situate in said Momence and Yellowhead Townships Drainage District No. 1, in said Kankakee County, Illinois, and causes said lands and said highways to be and become submerged by said overflow water, and that the said overflow water caused as aforesaid, has annually for the last three years destroyed the crops of the plaintiffs on their lands situate in said district and has caused the highways located in said district to become and be impassable for travel by the travelling public, all to the injury and damage of the plaintiffs in the sum of five hundred thousand (500,000) dollars; and said plaintiffs further aver and say that if the defendants are not prevented and restrained and enjoined from diverting and causing and permitting the drainage and water from their said lands and highways to be carried and discharged by and through said Singleton Ditch, as aforesaid, the same will continue to overflow and inundate plaintiffs' said lands and highways and will cause them to become and be submerged by said overflow water and will annually destroy their crops on said lands and will cause said highways to become impassable for travel by the travelling public, all to their great and irreparable injury and damage, and that they have no redress at law for said injury and damage.

VI

That approximately 75 other owners of agricultural lands situate in said Momence and Yellowhead Townships Drainage District No. 1, of Kankakee County, Illinois, all of whom are residents of the State of Illinois and are similarly situated as are the plaintiffs named herein viz: Martin Johnson and J. M. Johnson, Albert Johnson, Jesse Hayden and Harold Beier, individually, and Theodore Johnson and Oscar Johnson,

and their lands are similarly affected and their crops on their lands are destroyed by the overflows in the same manner and in all respects as are the lands and crops of the plaintiffs, Johnson and Johnson, and that they have sustained like proportionate injury and damage, and that they have collectively sustained injury and damage in the last fifteen years in excess of five hundred thousand dollars ($500,000); and said named plaintiffs herein further aver and say that because of said large number of landowners, as aforesaid, and to avoid a multiplicity of suits, the said named plaintiffs herein, bring this action against the defendants in this cause, for themselves and for and in behalf of said large number of landowners, not specifically named herein, but who are hereinabove described and referred to and are similarly situated, as are said plaintiffs, and whose lands and the crops thereon are similarly affected by the overflow water from said Singleton Ditch and its said laterals as are those of said named plaintiffs.

The plaintiffs herein further aver and say that if the defendants are not prevented and restrained and enjoined from diverting and causing and permitting the drainage and water from their said lands and highways to be carried and discharged by and through said Singleton Ditch, as aforesaid, the same will continue to overflow and inundate said lands owned by said persons, other than the plaintiffs herein named, whose lands are situate in said Momence and Yellowhead Township Drainage District No. 1, of Kankakee County, Illinois, and which said lands will overflow from the water from said Singleton Ditch and its said laterals in the like manner as the lands of the plaintiffs herein, and will continue to cause said lands to be and become submerged by said overflow water, and will annually destroy their crops on said lands, all to their great and irreparable injury and damage, and that they have no redress at law for said injury and damage.

VII

That said two hundred thousand (200,000) acres of land situate in said Lake County, Indiana, and which have and discharge their drainage into and through said Bailey Ditch and West Creek Ditch and Brown Ditch and Singleton Ditch as hereinabove described, are owned by the defendants hereinabove names, and by more than one thousand (1000) other persons and corporations all residing in and having their places of business in Lake County, in the State of Indiana; that the lands of said other persons and corporations are situated similarly and contribute to and eventually discharge their drainage through said Singleton Ditch and contribute to and in part cause the overflow conditions as hereinabove described in said Momence and Yellowhead Townships Drainage District No. 1, and that they and the defendants herein named wrongfully and without authority of law caused said dam to be constructed in and across said West Creek and caused the water to be diverted and carried through said Singleton Ditch as above described.

VIII

The plaintiffs further show unto the court that there is diversity of citzenship among the parties to this action, and that they reside in the States of Illinois and Indiana, as hereinabove more specifically stated, and they further show that this is a suit of a civil nature between citizens of said named different states, and that the matter in controversy exceeds, exclusive of interest and costs, the sum or value of Three Thousand ($3,000.00) Dollars.

IX

WHEREFORE, the plaintiffs herein bring this action, and ask that the defendants herein named and all other persons or corporations similarly situated be restrained and perpetually enjoined from maintaining said dam in and across said West Creek Ditch, and that they be required and ordered to remove the same and that they be restrained and enjoined from diverting the water from said West Creek Ditch and Blair Ditch and Brown Ditch, and causing it to be carried and discharged through said Singleton Ditch into said Main Ditch traversing said Momence and Yellowhead Townships Drainage District No. 1, of Kankakee County, Illinois, and from causing the water carried and discharged through said Singleton Ditch to overflow the lands of the plaintiffs herein, and of the persons similarly situated, and if defendants fail to remove said dam that the Court authorize the commissioners of the Momence and Yellowhead Townships Drainage District No. 1 of Kankakee County, Illinois, to remove said dam at the cost of defendants, and for Five Hundred Thousand Dollars ($500,000) damages, and for all other proper relief in the premises.

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